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PART II—Section 3—Sub-section (ii)

Statutory orders and notifications issued by the Ministries of the Government of India (other than the Ministry of Defence) and by Central Authorities (other than the Administrations of Union Territories).

ELECTION COMMISSION, INDIA

New Delhi, the 24th May, 1963

S.O. 1540.—In pursuance of clause (b) of sub-section (6) of section 116A of the Representation of the People Act, 1951, the Election Commission hereby publishes the decision of the High Court at Calcutta given on the 27th September, 1962, on an appeal from the order dated the 11th August, 1962, of the Election Tribunal, Bankura.

IN THE HIGH COURT AT CALCUTTA.

Appellate Civil Jurisdiction.

The 27th September, 1962.

PRESENT:

The Hon'ble Paresh Nath Mookerjee

AND

The Hon'ble Bijayesh Mukherji.

Two of the Judges of this Court.

APPEAL FROM ORIGINAL DECREE NO. 424 OF 1962.

Appeal against the decree of Sri S. K. Chakravarty, District Judge of zillah Bankura, Member, Election Tribunal, Bankura in Election Petition No. 111/62 (E. P. Suit No. 3 of 1962) dated the 11th of August, 1962.

Gurugobinda Basu, Respondent No. 1,—*Appellant.*

versus

Sankari Prosad Ghosal and other,—*Respondents.*

For Appellant.—Mr. S. M. Bose, Mr. A. C. Mitter, Mr. Birendra Nath Banerjee, Mr. Dwijendra Nath Lahiri and Mr. A. Ghose.

For Respondents.—Mr. Hariprosanna Mukherjee and Mr. Jnanendra Mohan De for Respondents Nos. 1 and 2, Mr. Bankim Chandra Roy and Mr. Shib Kumar Majumdar, for Respdt. No. 3.

P. N. Mookerjee, J:

This is an election appeal under s. 116A of the Representation of the People Act, 1951 (Act 43 of 1951). It seeks reversal of the order of the Election Tribunal below, setting aside the appellant's election to the House of the People from

Constituency No. 34 (Burdwan Parliamentary Constituency), a single member constituency for the Lower House of Parliament. The election was held in February 1962, the dates of polling being the 19th, 20th and 22nd of that month. There were two candidates including the appellant. The appellant was declared elected on March 1, 1962, he having secured 1,55,485 votes as against his rival Subiman Ghosh, respondent No. 3 herein, who obtained 1,23,015 votes. The election was challenged and the instant proceeding was started on April 10, 1962, upon an application, filed by two voters of the above Constituency, who are now the first two respondents before us. The rival candidate Subiman Ghosh is the remaining respondent No. 3 in this appeal.

The challenge to the appellant's election was founded, broadly, on two grounds, namely, (i) that he was, at the relevant date, the holder of offices of profit under the Government, both Central and State, which disqualified him from standing in the election in question under Art. 102(1)(a) of the Constitution and (ii) that he (the appellant) was guilty of corrupt practices, which vitiated his election and made it liable to be set aside. The relevant and necessary details under the first head will be presently stated in brief. Of the second ground, further details are unnecessary, as this ground was not pressed before the lower Tribunal, and apparently, abandoned, the applicants (respondents Nos. 1 and 2) choosing to rest their case solely on the first ground aforementioned and confining their challenge to the appellant's election to and within the limits of Art. 102(1)(a) of the Constitution.

The appellant entered contest and, while admitting the broad basic details or allegations of fact, as given in the first two respondents' application, controverted their allegation that he was the holder of any office of profit under the Government, either State or Central, so as to be unfit for standing in the election under Art. 102(1)(a) of the Constitution. The contest, so raised, was thus, primarily one on a point of law, though, as we shall notice hereinafter, it involved also a small question of fact, necessary for a comprehensive treatment of the said point of law.

To turn, now to the specific allegations, relevant for our present purpose:

(1) That the appellant, a chartered Accountant himself, was a partner of the firm of Auditors, carrying on business under the name and style of G. Basu and Co.

(2) That the said firm of Auditors was the auditor of amongst others, the Life Insurance Corporation of India, Durgapur Projects Ltd., and Hindusthan Steel Limited, on certain remunerations.

(3) That, as auditor as aforesaid, the said firm was holding offices of profit under the Central Government and, accordingly, the appellant, as a partner of the said firm, was also holding such offices of profit.

(4) That the appellant was also a Director of the West Bengal Financial Corporation, he having been nominated or appointed as such by the West Bengal State Government, and such appointment or nomination carried with it the right to receive fees or remuneration as director as aforesaid, and

(5) That the holding of the aforesaid directorship of the West Bengal Financial Corporation on nomination by the State Government upon the usual fees or remuneration, payable to a director by the said Corporation, made the appellant the holder of an office of profit under the State Government too.

The above basic facts are not denied. Indeed, they are all admitted, namely, that the appellant is a partner of the firm of auditors G. Basu & Co.; that the said firm is the auditor of the Life Insurance Corporation of India, Durgapur Projects Ltd. and Hindusthan Steel Ltd. and receive remuneration as such; that the appellant is also one of the nominated directors of the West Bengal Financial Corporation, such nomination having been made by the State Government of West Bengal; and that he receives the usual fees or remuneration of a director an aforesaid. It is contended, however, that even on these facts, the constitutional disqualification under Art. 102(1)(a) of the Constitution is not attracted. In essence, the parties differ broadly upon the above point of law alone, namely, the inference to be drawn from the above admitted facts, though as we shall notice hereinafter, this difference embraces also a small question of fact.

Before the Tribunal below, the dispute so far as the first three concerns are concerned, though broadly confined to the above point of law, was a little more broad-based in that, there, the appellant contended further, that appointment as

auditor did not amount to the holding of an office or, for the matter of that, of an office of profit and that the mere fact that he was a partner of the firm of auditors, so appointed, did not make him the holder of any such office. No such extreme contention was, however, pressed or put forward before us and the learned Advocate General, with his usual fairness and in his usual brevity and 'to-the-point' argument, chose to confine himself, so far as the said three concerns, namely, the Life Insurance Corporation of India, Durgapur Projects Ltd., and Hindusthan Steel Ltd., were concerned, only to the question whether the above admitted facts were sufficient to make the appellant, as partner of the firm of auditors G. Basu & Co., the holder of an office of profit under the Government, to wit, the Central Government, so as to bring him within the mischief of the disqualifying Art. 102(1)(a) of the Constitution. I may just and here that, upon principle and authority, a more extreme argument would have been untenable and it could only have raised a smoke too thin to abstruct vision and liable to be cleared up in no time. With regard to the West Bengal Financial Corporation, however, the submission was broader and there, the further question was raised whether the appellant's directorship of the said concern involved the holding of an office of profit at all. To these different contentions, I shall address myself in due time.

Before turning to the relevant Article, I deem it necessary to make a few preliminary observations. The essence of democracy lies in true representation of the people. It is essential, therefore, that the elected representatives should not be open to any influence or temptation, which may stand in the way or their serving truly the people of their constituency. Possibility of such influence or interest or semblance of any such temptation is sufficient disqualification unless law provides to the contrary. That, indeed, is the ruling concept, underlying the relevant parts of our Constitution. Parliament, no doubt, is supreme but it is so within the limits of the Constitution. It has powers in certain cases, to lay down exception and, while so authorising Parliament, the Constitution itself has provided certain exceptions. The exceptions, however, are exceptions to the above fundamental approach and principle and should be read as such and strictly construed. They should not be permitted to over-cloud the principle itself. Corruption in election and corruption in the elected representatives are equally reprehensible and courts should be vigilant about it and prevent within the limits of the Constitution and permitted and relevant legislation, possibilities or chances of corruption, to keep pure, unsullied and unturmoiled the resplendent and transparant stream of representation. Conflict of duty and interest in the elected representatives should be avoided and they should be removed from all possible traces or semblance of influence which may deter them from discharging their duties to the electors or the people. As I have remarked on an earlier occasion upon a like or allied provision [s. 7(d) of the Representation of the People Act, 1961], disqualifying provisions, like the present [Art. 102(1)(a) of the Constitution] 'have been a familiar feature of election laws from very early times. They are based on a sound, solemn and salutary principle which democracies or democratic constitutions can ill afford to spare or ignore. Their purpose is to guarantee the purity of the legislature and of the administrative machinery as well and it has been variously put by various eminent Judges and noted authorities but always with an eye to the guarantee of purity of the legislature and administration and to keep the source or the fountain head of law and the stream of administration unsullied and free from corruption. The basic standpoint is to prevent conflict between interest and duty which would otherwise inexitably arise [per Lindley L. J. in Nutton *v.* Wilson (1889) 22 Q.B.D. 744 at p. 748] and 'to prevent the member concerned from being exposed to temptation or even to semblance of temptation [per Lord Esher M. R. in the same case Nutton *v.* Wilson (1889) 22 Q.B.D. 744 at p. 747]. That indeed, 'has never been questioned' (*vide* Brojo Gopal Das and others *v.* Kalipada Banerjee and others, A.I.R. 1960 Cal 92 at p. 98). The context also makes it plain that such provisions should receive, though, undoubtedly, within the limits of the Constitution and governing statutes, a wide interpretation to prevent the mischief, which might otherwise follow. Indeed, it is only reasonable that they receive the widest connotation and application, consistently, of course, with the letter,—and, if I may respectfully and the spirit,—of the Constitution and the relevant statutes. Such construction may, no doubt, entail some hardship and some sacrifices, may be vital and considerable, and may demand a strong spirit of service and sacrifice from the intending candidates, but that is probably well both for the elector and the elected. Service of the people may not be possible or consistent with conflicting personal interest and such interest or possibility or chances thereof should be removed and obliterated, unless expressly permitted or tolerated by the Constitution or appropriate legislation, before one can hope or aspire to be a people's

representative. Exigencies or practical considerations may justify exceptions but, of that the Constitution and competent legislation are the only source and authority. There is grave risk in holding otherwise and the lurking danger, which underlies a different approach, may vitally endanger and undermine and even destroy the Constitution.

To quote, now, the relevant provision [Art. 102(1)(a) of the Constitution]:

"*Article* 102.

(1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament—

(a) If he holds any office of profit under the Government of India or the Government or any State, other than an office declared by Parliament by law not to disqualify its holder;

* * * * *"

No other disqualifying provision or disqualification is relevant for our present purpose. In the course of argument, reference was made by the learned Advocate General to s.7(e) of the Representation of the People Act, 1951, but the contesting respondents explicitly stated and affirmed that their case is not founded on any provision of law save and except Art. 102(1)(a) of the Constitution and that they do not challenge the appellant's election except under that provision. This, indeed, is abundantly clear from the original petition, filed by them before the Election Tribunal, upon which the instant proceeding was started and upon which the same is founded, and they alleged and allege no other disqualification against the appellant's competency to stand for this particular election. Before the Tribunal, some reference appears to have been made to s.8(e) of the Representation of the People Act, 1951, possibly with a view to show that the appellant's directorship of the West Bengal Financial Corporation would not be a disqualification for the purpose of his present election but, as the tribunal rightly pointed out, the said saving section [s.8(e)] refers only to the disqualification under s. 7(e), which is not relevant here and no part of the case of the contesting respondents.

In the context, the whole case rests on Art. 102(1)(2) of the Constitution and, thus, the enquiry is limited to two points: (i) whether the appellant, at the material date and time, held an office, to wit, an office of profit, and that, again, under the Government, State or Central, and (ii) If so, whether Parliament has prescribed any protective or exempting provision in respect of the same.

This last part almost answers itself and answers itself in the negative, as the learned Advocate General has made it clear that the appellant does not contend that there is any such protection or exemption in the instant case, one it is held that he holds an office of profit under the Government, either as a partner of the auditor firm G. Basu & Co., in their capacity as auditors of the first three concerns, or, as a director of the fourth concern, West Bengal Financial Corporation and as the appellant, notwithstanding the fullest opportunities in that behalf, has not produced any materials before the Court, presumbaly within his power, to avail himself of the possible exemption under s. 2(a) of the Parliament (Prevention of Disqualification) Act, 1959, or otherwise, thus inviting, as a matter of law, an adverse presumption against him under s. 114 (g) of the Indian Evidence Act, apart from the position that the onus to prove his eligibility for such exemption, if any, is upon him and that onus has not been discharged. To this part, I shall return later in greater details, after I have dealt with the main or the more vital part of the problem, namely, whether the appellant did, at the relevant date or time, hold an office of profit under the Government.

As I have said earlier, there is no dispute here that the appellant, as partner of the firm G. Basu & Co., who are auditors of the first three concerns, holds an office of profit. The question, however, is whether he holds such office under the Government. The answer, in my opinion, should be in the affirmative, although the grounds for so holding would be slightly different, at the outset, though not in the end, in the case of the first concern from the other two. The test, in each case, is the same in the ultimate analysis, although the process of reaching and applying that test is slightly different in the two cases. That test, as I read it on the authorities, depends on the seat of effective control over the office in question, such control being manifested and determined, primarily by the power of appointment and power of dismissal, though, in some cases, the sources or the fund, out of which the remuneration is paid, may also require consideration and

may usefully aid the final conclusion. This last factor, however, is normally of comparatively minor importance and is often neutral and not decisive by itself (*vide* Maulana Abdul Shakdoor *v.* Rikhab Chand and another, 13 E.L.R. 149, at pages 157 and 158, *vide* also Dr. Deo Rao Lakshman Anande *v.* Keshav Lakshman Broker, 13 E.L.R. 334, at page 345). But there may be cases, where it may be of some importance and may even prove to be the ultimate determinant. In this connection, the following passages from the judgement of the Supreme Court in Moulana Abdul Shakoor's case *supra* may be usefully and conveniently quoted:

> "The power of the Government to appoint a person to an office of profit or to continue him in that office or revoke his appointment at their discretion and payment from out of Government revenues are important factors in determining whether that person is holding an office of profit under the Government, though payment from a source other than Government revenue is not always a decisive factor." (*vide* p. 157). (*Vide* also the pointed reference to the test, in the above matter, of the power of dismissal in the Government in the same page).
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> "No doubt the non-payment from out of the revenues of the Union is not always a factor of any consequence but it is of some importance in the circumstances of this case" (*vide* p. 158).
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> "The power of appointment and dismissal by the Government or control exercised by the Government is an important consideration which determines in favour of the person holding an office of profit under the Government but the fact that he is not paid from out of the state revenues is by itself a neutral factor" (*vide* p. 158).

And they, by themselves, amply support the above propositions.

Substantially, to the same effect, are also the observations of the Bombay High Court in the case of Dr. Deo Rao Lakshman Anande, *supra*, where the relevant test is broadly stated in these terms:

> "Principal tests for deciding whether an office is under the Government are (1) what authority has the power to make an appointment to the office concerned, (2) what authority can take disciplinary action and remove or dismiss the holder of the office? and (3) by whom and from what source is his remuneration paid? Of these the first two are more important than the third one" (*vide* p. 345).

Speaking for myself, I would even go further to hold that where the powers of appointment and dismissal are vested in different authorities and the remuneration is paid by another, the office should be deemed to be held under all of them, if a wide connotation and construction be preferable, as it should be under Art. 102 (1) (a) of the Constitution and like provisions. Indeed, if the power of appointment be in a particular authority, it may well be said that the office is held under it (*vide* M. Ramappa *Vs.* Sangappa and others, A.I.R. 1958 S.C. 937 at p. 939; *see* also Gazula Dasaratha Rama Rao *Vs.* State of Andhra Pradesh and others, A.I.R. 1961 S.C. 564 at p. 570) and no less logical would it be to hold that the office is held under the authority, which wields the power of dismissal or pays the remuneration. For a strict determination no doubt; that is, where a single authority has to be found, it may well be necessary to consider the cumulative effect of all the above factors and stress on the one or the other may depend on the circumstances of the individual or particular case but where, as here, a liberal and wide interpretation is preferable, it is safer to hold that the office is held under the seat of control in the shape either of the power of appointment or the power of dismissal or the source of the remuneration or the like.

Admittedly, Durgapur Projects Ltd. and Hindustan Steel Ltd. are Government companies within the meaning of s.2(18), read with s.617, of the Indian Companies Act, which governs them. Appointment of their auditors, therefore, is governed by the provisions of s.619(2) of the Act. To the same effect, are the relevant articles in their respective Articles of Association and that had to be so as any different or contrary provision in that behalf would have offended the statute and would, thus, have been void on that ground. In accordance with the above, the

appointment of the appellant's firm G. Basu & Co. as auditors of the above companies was "by the Central Government on the advice of the Comptroller and Auditor-General of India" and so also was or would be its re-appointment, if any, [*vide* the above s.619(2) and Arts. 152(a) and 143(a) respectively of the Article of Association of the above two companies, following and in conformity with the said relevant statutory provision.] It is, thus, *ex facie* and in express terms, an appointment by the Government to wit, the Central Government, which, in the premises, is the appointing authority and is so under the above Central Act. It follows, then, that, in the absence of a provision or indication to the contrary, the same Central Government would be the dismissing authority and would have the power of dismissal in the matter under s.16 of the Indian General Clauses Act, which stands in these terms:

> "Where, by any Central Act or Regulation, a power to make any appointment is conferred, then, unless a different intention appears, the authority having for the time being power to make the appointment shall also have power to suspend or dismiss any person appointed whether by itself or any other authority in exercise of that power."

The learned Advocate General argues that there is, in the instant case, such contrary provision or indication and he points out to us s.224(7) of the Indian Companies Act. This sub-Section expressly refers to and applied to an appointment under s.224(1) and it may be a matter of some argument whether it is intended to apply to an appointment under s.619. It is arguable, however, that, under the scheme of the statute, s.619 really incorporates itself into s.224 and becomes part of its except to the extent of inconsistent provisions, which is overrides, so that an appointment under s.619(2) is, so far as Government companies are concerned, really and for purposes of the Act, an appointment under Section 224, to wit, s.224(1), thus attracting to it sub-section (7) of the said Section. This view receives some support and confirmation from the language of s.619 [*vide* sub-section (1)]. Be that as it may, the position, even under s.224(7), would be that the dismissal would be subject to the plenary control of the Central Government and, virtually and in substance, as I put it during argument, such dismissal would be by the said Government. This, indeed, follows from the pre-requisite of the Central Government's previous approval [*vide* s.224(7)]. It is needless to emphasise that, in matters like the present, the substance counts and prevails and not the form. The net result would, thus, be that, in the matter of the auditors of the above two companies, the power of appointment and the power of dismissal would both be with the Central Government and their remuneration also would be fixed by the said Government [*vide* s.224(8) of the Indian Companies Act and Arts. 152(a) and 143(a) respectively of the Articles of Association of the two companies, already referred to] and, even, though, undoubtedly, such remuneration would be paid by the two companies concerned, that would not make any difference in the ultimate conclusion that the said auditors would be holding office under the Central Government, there being, at any rate, sufficient and requisite control, vested in the said Government, in the matter of the said auditors (*vide* Moulana Abdul Shakoor's case and Dr. Deo Rao Lakshman Anande's case, *supra*).

The same, in substance, is the position in regard to the Life Insurance Corporation of India too and the same would be the conclusion. This Corporation may not strictly, be a Government concern, notwithstanding the Government's contribution of its entire initial capital (*vide* s.5) and large amount of Government control, envisaged and prescribed in and under ss.4,6,18,21,25,27,48 and 49. It may, on the other hand, well be an autonomous statutory body, being, as the statute says (*vide* s. 3), a body corporate, having perpetual succession and a seal of its own and capable of suing and being sued in its own name, and may, thus, be regarded as a separate and independent legal entity, distinct from the Government. It may or may not also, even be a body or authority under or subject to the control of the Government, strictly so called. Under the statute, however, which created it, the appointment of its auditors is regulated and controlled by s.25, to quote only its relevant part, runs as follows:

> "Sec. 25 (1) The Accounts of the Corporation shall be audited by auditors duly qualified to act as auditors of companies under the law for the time being in force relating to companies and the auditors shall be appointed by the Corporation with the previous approval of the Central Government and shall receive such remuneration from the Corporation as the Central Government may fix.
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> (3) The auditors shall submit their report to the Corporation and shall also forward a copy of their report to the Central Government."

It is clear, then, that so far as this appointment of auditors is concerned, it is well under the control,—the effective control, as I put it during argument,—of the Central Government. Virtually and in substance, then, this also is a case of appointment by the Central Government, or, in other words, the power of appointment, or, more accurately, effective power in that behalf, lies with the Central Government. No person can be appointed auditor of this Corporation except with the previous approval of the Central Government. His remuneration also is to be fixed by the Central Government. Thus, in the matter of this appointment, the Central Government holds the whip hand and can dictate terms. Essentially, then, it is appointment by the Central Government, however much in form it may be made by the Corporation. The Act, again does not provide for or deal specifically with the power of dismissal and, in the premises, the power of dismissal, in this case, too, would, in my opinion, vest in the Central Government under the aforesaid s.16 of the Indian General Clauses Act. Even otherwise, the power of dismissal must, logically and on principle, be, in law, subject to the previous approval of the Central Government in line with the above statutory power of appointment, so that effective power in that behalf would be in the Central Government. In the ultimate analysis, then, this also would be a case where the relevant power of appointment and dismissal of auditors, or, at least, requisite and sufficient control in that behalf, would be in the Central Government and, even though their remuneration,—but that again, as fixed by the Central Government—has to be paid by the Corporation, upon the test, laid down above (*vide* the cases cited), the appellant, in this case, too, would be holding an office of profit under the Central Government.

For holding an office of profit under the Government, one need not be in the Service of the Government and there need not be relationship of master and servant between them. He need not be a Government servant. The constitution itself makes a distinction between the holder of an office of profit under the Government and the holder of a service under the Government. It also distinguishes them from the holder of an office of profit under a local or other authority subject to the control of the Government. In the several relevant provisions [*vide* Arts. 58(2), 66(4), 102(1)(a), 191(1)(a) and 309 to 314 etc.], different and appropriate expressions have been used and these should not be confused. To hold an office of profit under the Government, a person need not be in the service of the Government and need not be the holder of a service under it or a Government servant. His remuneration, also, need not come from Government funds. It will be enough, if the Government holds the power of appointment and dismissal in the matter, or wields sufficient control over the same (*vide* the cases cited). On similar tests, the holder of an office of profit under a local or other authority, however, much such authority may be subject to or under the control of the Government, would also be different from the holder of an office of profit under the Government , as in such cases, the power of appointment, and dismissal, or, at any rate, effective/and sufficient control in the matter, would be in the local or other authority concerned. Distinction also exists between one, serving under the Government, and one in the service of the Government (*vide* Raja Bahadur K. C. Deo Bhanj *Vs.* Raghunath Misra and others A.I.R. 1959 S.C. 589 at pp. 594-5).

On the above distinctions, the decisions, cited by the learned Advocate General, namely, Tamlin *Vs.* Hannaford (1950) 1 K.B. 18; G. Narayanaswamy Naidu *Vs.* C. Krishnamurthi and another, 14 E.L.R. 21; Subodh Ranjan Ghosh *Vs.* Sindri Fertilisers and Chemicals Ltd. and another, A.I.R. 1957 Pat. 10; and Sm. Ena Ghosh *Vs.* State of West Bengal and others, A.I.R. 1962 Cal. 420, are all distinguishable and they will have no bearing on the instant case. The test here does not depend upon the particular concern being a servant or agent of the Government or a department of the same or under its control. The accent is on the holder of the office of profit,—whether he holds such office under the Government—and the tests in that behalf are, on the authorities, as already explained, different and not necessarily the same as for service under the Government, or, for the matter of that, under an agent, servant or department of Government, or for the holding of an office under a local or other authority subject to or under the control of the Government, including an agent, servant or department of Government. The cited English authority, on which the learned Advocate General so strongly relied, was concerned with the question whether a statutory body like the British Transport Commission was an agent or servant of the Crown or a department of Government so as to be entitled to its (Crown's) immunities and privileges against the law of the land. With all respect to the learned Advocate General, I am unable to see how that decision, can be of any real assistance in the matter, now before us, or can have any relevance here, in view of the distinctions, stressed above by me.

Clearly also, the two cases, reported in A.I.R. 1962 All 128 (Joti Prosad Upadhya *Vs.* Kalika Prosad Bhatnagar and others) and A.I.R. 1962 H.P. 52 (Siri Ram and another *Vs.* Niranjan Singh and others) are basically different and distinguishable in view of the decision of the Supreme Court in Moulana Abdul Shakoor's case, *supra*, as the holders of the offices of profit, there concerned, as, before the Supreme Court, upon the findings in the respective cases, held the offices, not under the Government but under an authority under or subject to the control of the Government.

Lastly, comes the West Bengal Financial Corporation. It is a body corporate, established under s.3, read with s.2(b) of the State Financial Corporation Act, 1951 (Act 63 of 1951), having perpetual succession and a common seal and capable of suing and being sued in its own name [*vide* s.3(2)]. The appellant is a director of this concern. He has been nominated to it by the State Government, namely, the Government of West Bengal, under s.10(a) of the Act. He holds this office at the pleasure of the said Government [*vide* s.11(1)—], his nomination and tenure as director as aforesaid, that is, including tenure of his said office, depending upon the said (State) Government [*vide* ss.10(a) and 11(1)] reference to s.13, which confers express power of removal of any director, nominated or otherwise, in certain contingencies, being unnecessary and irrelevant in the present instance. It is clear, therefore, that the power of appointment or nomination and dismissal, that is, removal from office or termination of the office, is vested in the State Government, which is sufficient to make the appelant the holder of an office under the said Government. On behalf of the appellant, reference was made, during arguments, to ss. 12 and 16 of the above Act to show that the appellant, as director as aforesaid, is neither a salaried official of the Corporation (as in s.12), nor a servant of the State Government (as in s.16), but that is wholly irrelevant for our present purpose as, on the tests, laid down herein before, the appellant would still be, upon what has been stated above, a person, holding an office under the State Government. In the premises, the only further question, which remains and needs consideration, is whether the appellant's aforesaid office is an office of profit. That question *prima facie* answers itself against the appellant, when, admittedly, he receives fees or remuneration for it. It was, of course, open to the appellant to rebut this *prima facie* position. He could have done it by showing that the fee or remuneration, which he receives, cannot be considered as profit in law for purposes of the above office, in view of the Parliament (Prevention of Disqualification) Act, 1959, [*vide* s.3(i), read with s.(2a)], or, possibly, by showing, in the alternative, that, as a matter of fact, it cannot be considered as profit in the light of the decision of the Supreme Court in Ravana Subanna *Vs.* G. S. Kaggerappa, A.I.R. 1954 S.C. 653 at pp. 656-7. He has, however, chosen not to place any material before the court in that behalf, notwithstanding the fullest opportunities, given to him for the purpose, and has, thus, failed to discharge the onus, cast upon him in the matter. The conclusion, then, is irresistible that, as a director as aforesaid, the appellant holds an office of profit under the State Government and this, also, is sufficient to disqualify him under Art. 102(1)(a) of the Constitution.

Incidentally, I may note that, at one stage of the arguments on this last quoted aspect, reference was made by the learned Advocate General to ss.7(e) and 8(e) of the Representation of the People Act, 1951, under the impression that the Election Tribunal below, also, held the appellant disqualified for the election in question under s.7(c) of the above Act, on the ground that he was a director of a Government concern and he criticised this view by emphasising that, this being a parliamentary election, to wit, election to the House of the People, 'appropriate Government' under the above Section would be the Central and not the State Government [*vide* s.9(1)(a)] and, however, much, the appellant may be a Director of a State Government concern, he would not, merely because he is such a director, be disqualified for election to the House of the people under the said statutory provision. Apparently, this argument had had its inspiration from the reference in the Tribunal's judgment to ss.7(e) and 8(e) of the Representation of the People Act, 1951, but as noticed earlier, that reference was made altogether from a different point of view and for a different purpose. The Tribunal did not hold the appellant disqualified under s.7(e) of the above Act and the learned Advocate General's submission to the contrary is not correct. Indeed, there can be no question that the appellant is not disqualified in the matter of the impugned election, merely by reason of his being a director of the above concern, under s.7(e), as the 'appropriate Government' for purposes of this election under the said section would be the Central Government and not the State Government under s.9(1)(a) of the above Act, as contended for by the learned Advocate General. The respondents did not contest that position and the Tribunal also did not hold the contrary. Indeed, if the appellant's disqualification had been sought to be founded on the

above section that is, merely because of his being a director of the above concern, without mere, that is, without his right to be remunerated for the said office, the appellant would have succeeded, at least on this part of the case, as the learned Advocate General's submission on this point of law would have been relevant and unanswerable. The above section disqualifies the director of a Government concern subject only to the exception, mentioned in s.8(e), and this it does, without reference to any provision for fees or remuneration and irrespective of the same. But the Government there must be the 'appropriate Government', that is, the Central Government in the instant case of parliamentary election [*vide* s.9(1)(a)]. The above Act, however, would be irrelevant here and would not apply as the Government concern here in question is of the State Government. That, again, as I have already said, is not the respondent's case and the appellant's disqualification, as director as aforesaid, is not pleaded or urged under the above Act but under a different provision, namely, Art. 102(1)(a) of the constitution, on account of the fees or remuneration, received or receivable by him as such director which, as I have held above, make it an office of profit and bring him within the mischief of the said Article, which speaks of an office of profit under the Government, be it State or Central.

One other aspect deserves consideration, although it was not specifically referred to before us. It may perhaps be contended that ss.(7)(e) and 8(e) of the Representation of the People Act, 1951, constitute together an exception to the rule of disqualification, otherwise available and applicable against the persons, mentioned in s.7(e), under other provisions, *e.g.* Arts. 58(2), 66(4), 102(1)(a) and 191(1)(a) of the Constitution, so that, however such a person within the aforesaid category [*vide* s.7(e)] may be holding an office of profit under the aforesaid Articles, he will not be disqualified unless s.8(e) makes him so. If that view of the law be correct, the appellant would not certainly suffer, because of his directorship of the West Bengal Financial Corporation, even though, as held above by us, it is, in the instant case, an office of profit under the Government, the State Government, to be exact, so as to be otherwise within the mischief of Art. 102(1)(a) of the Constitution. I do not think, however, that the aforesaid view of the law would be correct. Section 7(c), or, for the matter of that, that section, read with s.8(e), of the Representation of the People Act, 1951, was not meant to be an exception to or under Art. 102 or a restriction to its disqualifying provisions. It constitutes, on the other hand, an extension of the rule of disqualification, though within the limits prescribed in and subject to ss.8(e) and 9(1)(a) of the Representation of the People Act, 1951, namely, that it makes the holder of the office, mentioned therein, disqualified to the extent, indicated in the said s.8(e) and s.9(1)(a), irrespective of the question whether it is an office of profit or not. In other words, a person, not disqualified under Art. 102 of the Constitution or the like, may well be disqualified under s.7(e), read with s.8(e) and s.9(1)(a) of the Representation of the People Act, 1951, without affecting the position that a person disqualified under the said Article, would remain so in spite of the aforesaid sections, so that a person, not disqualified thereunder, that is, under the aforesaid, sections, may yet be disqualified under the above Articles. That is, what has actually happened in the instant case.

It may be noted, in the above connection, that Art. 102 of the constitution itself embodies an exception to the above Sub-Art. 1(a) in Sub-Art. (2) which lays down that "for the purposes of this Article (Art. 102) a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State by reason only that he is a Minister either for the Union or for such State." But, obviously that exception has no application here.

I would, accordingly, hold that the appellant was disqualified from membership of the House of the People by reason of his being a partner of G. Basu & Co. in their capacity as auditors of the first three concerns, the Life Insurance Corporation of India, Durgapur Projects Ltd., and Hindusthan Steel Ltd., and by reason also of his being a director of the fourth concern, the West Bengal Financial Corporation. The Election Tribunal below was, therefore, right in upsetting his election and allowing the contesting respondent's application for the purpose.

In the result, this appeal would fail and it will be dismissed. As, however, the point was, strictly speaking, one of first impression, the parties will bear their own costs in this Court.

Bijayesh Mukherji, J:

This is an appeal under Section 116A of the Representation of the People Act, 43 of 1951, by the first respondent, Shri Gurugobinda Basu, whose election on

March 1, 1962 to the House of the People from No. 34 Burdwan Parliamentary Constituency a one-member Election Tribunal consisting of Shri Santosh Kumar Chakravarti, District Judge, Bankura, as constituted under section 86 *ibid*, declares void. The date of the Tribunal's order to that end under section 98(b) *ibid* is August 11, 1962.

The circumstances leading to the "purely statutory proceeding" now under appeal need not be referred to further than as follows:

Sarvashri Sankari Prosad Ghosal and Narayan Chandra Ghosh, two electors of the Parliamentary Constituency just named, present an election petition (the instant one) to the Election Commission calling in quesion the appellant's election on a certain ground—one that is specified in sub-section (1) of section 100 *ibid*. The ground is that on March 1, 1962—the date of his election—he held several offices of profit under the Central and State Governments and was therefore disqualified for being chosen as member of the House of the People. The averment about his having held and holding offices of profit rests on the allegation that Messrs. G. Basu and Co.—a firm of which the appellant is admittedly a partner (as it transpires from his written statement)—were auditors on March 1, 1962 of Life Insurance Corporation of India, Durgapore Projects Limited and Hindusthan Steels Limited, shortened hereafter into "LIC", "Durgapore" and "Hindusthan" respectively. At the relevant time he was all this and more: a member nominated by the State Government of the board of directors of the West Bengal Financial Corporation, referred to hereafter, for brevity's sake, as "the Corporation." Voiding the appellant's election is therefore one relief prayed for. The other relief praying the seat for the defeated candidate, Shri Subiman Ghosh, the second respondent, is negatived by the Tribunal and no longer insisted upon.

The date of presentation of a petition as that to the Election Commission under section 81 *ibid* is April, 10, 1962 which is within forty-five days from March 1, 1962—the date of the appellant's election. Presentation over, it is admitted. The date of admission is April 22, 1962. A copy thereof is served on the appellant, the first respondent to the petition, and also on the second respondent whom the appellant defeated by 32,470 votes, as will appear from—

Names of candidates	*Votes polled*
Gurugobinda Basu	1,55,485
Subimal Ghosh	1,23,015
Difference—	32,470

A copy thereof is published too in the Gazette of India, the official gazette within the meaning of section 2(3)(c) read with section 86(1) *ibid*. See the Gazette of India dated May 5, 1962 referred to by the Election Commission in its order No. 4 dated May 17, 1962. All this done, the Election Commission by virtue of authority vested in it under section 86(3) *ibid* constitutes the Election Tribunal (noticed already) and assigns the petition to it for trial, fixing the venue thereof at Bankura in terms of section 88 *ibid*.

The election petition reaching the Tribunal, it issues certain directives in pursuance of which the appellant *qua* the first respondent files a written statement denying that he had held on the relevant date or even an office of profit under the Government Central or State. That Messrs G. Basu and Co. is one of the firms of Chartered Accountants doing the audit of LIC, Durgapore and Hindusthan is admitted. Is admitted too the appellant being a partner of the firm. What is denied is that thereby he holds an office of profit under any Government. The accent is laid on each of three undertakings—LIC, Durgapore and Hindusthan—being a separate legal entity with perpetual succession and a seal of its own and paying the remuneration of the auditors from its fund. The appellant having held an office of profit under the Central Government or any Government is therefore denied. At the same time it is averred that appointment of auditors is made by LIC with the approval of the Central Government and for Durgapore and Hindusthan by the Central Government. The appellant having been nominated by the State Government as a member of the board of directors of the Corporation is admitted. But it is emphasized that the Corporation is a statutory body incorporated under the State Financial Corporations Act, 63 of 1951, and pays out of its funds the appellant's remuneration "for attending the Board and Committee meetings". More, the impugned election concerning the *Lok Sabha* and the Corporation being an affair of the State, the State Government is not the appropriate Government within the

meaning of Section 7(e) of the Representation of the People Act, 43 of 1951 so as to have the slur of disqualification put upon him (the appellant).

The five issues struck by the Tribunal need not be reproduced Suffice it to say that the first three only count and that the pith of those three may be rendered thus: is the appellant disqualified for being chosen a member of the *Lok Sabha* for having been on March 1, 1962—the date of his election—a partner of the firm G. Basu & Co.—one of the auditors of LIC, Durgapore and Hindusthan and for himself being a member of the board of directors of the Corporation?

The learned Judge constituting the Tribunal holds that he is. The reasons why he holds so are—one, an auditor auditing the accounts as above holds an office; two, a firm holding an office, each member thereof holds an office too; three, the appliant, a partner of the firm of auditrs (Messrs. G. Basu & Co.), therefore holds an office; four, the appellant and the firm he is a partner of are under the control of the Central Government in that LIC by virtue of section 25 of the Life Insurance Corporation Act, 31 of 1956, appoints the auditors with the previous approval of the Central Government and the auditors so appointed receive such remuneration as the said Government fixes, thus LIC not standing between the auditors and the Central Government and the auditors owing their appointment and the quantum of remuneration directly to the Central Government; five, more so for Durgapore and Hindusthan which under the articles of association auditors are appointed or reappointed by the Central Government on the advice of the comptroller and Auditor-General, their remuneration, rights and duties being regulated by sections 224—233 of the Companies Act, 1 of 1956, and their being under the control of the Central Government thus looking so definite; six, Messrs. G. Basu & Co. and necessarily its partner, the appellant, must therefore be deemed to be holding offices of profit under the Central Government; seven, the office of auditors has been declared by Parliament by law not to disqualify its holder: and eight, the appellant does hold an office of profit as a member of the board of directors of the Corporation under the State Government and as such is disqualified under Article 102 (1)(a) of the Constitution, the Parliament (Prevention of Disqualification) Act, 10 of 1959, not coming to his aid, nor section 7(e) read with section 8(e) of the Representation of the People Act, 43 of 1951.

It only remains to be noticed that neither party calls oral evidence at the trial. Told so, the Tribunal expresses and records what it feels about this: "It is necessary to have the evidence of respondent No. 1", that is, the appellant before us. Such an observation emanating from the Tribunal, the learned pleader appearing for the respondent No. 1 there (the appellant here) pleads for a little time "to think over this matter"—*vide* order No. 12 dated August 6, 1962 recorded at 11-40 a.m. And the hearing is postponed till 2-30 p.m. the same day when, however, the decision not to examine either the appellant or any witness on his behalf is adhered to. Observing that "the risk is entirely of the respondent No. 1" the Tribunal sets down the proceeding on the day following "for arguments". "Arguments heard, the Tribunal makes an order declaring the appellant's election to the House of the People to be void, as stated above.

The Tribunal has before it the pleadings—in particular, the admissions (briefly noticed) in the appellant's written statement—and certain documents received in evidence on behalf of the appellant on admission by his adversaries. These documents are Durgapore's memorandum of association (exhibit B), Hindusthan's memorandum of association (Ext. B/1), Hindusthan's articles of association (Ext. C) Durgapore's articles of association (Exhibit C/1), Hindusthan's seventh annual report, 1960-61, (Ext. D), LIC's statement of accounts for the year ended 31st December, 1960" (Exhibit E), a letter dated August 28, 1961 from LIC's executive director to Messrs. G. Basu and Co. enclosing a cheque for Rs. 29,000/- as fees for auditing the accounts for the year 1960 (Exhibit A) and another letter dated December 29, 1961 from Hindusthan's executive officer enclosing a cheque for Rs. 70,000/- as fees for auditing accounts "for the year ended 31st March 1961" (Exhibit A/1).

The learned Advocate-General appears for the appellant. He has lightened our labour by conceding that the appellant holds offices of profit under LIC, Durgapore and Hindusthan. But, he contends, to hold offices of profit under them is not to hold offices of profit under the Government of India. That being so, he concludes, the appellant is not disqualified for being chosen as a member of the *Lok Sabha*, a House of Parliament, under Article 102(1)(a) of the Constitution.

How the auditors are appointed needs looking into. For LIC, the relevant section is section 25 of the Life Insurance Corporation Act, 31 of 1956—a section upon which the Tribunal bases its finding and Mr. Hari Prasanna Mukherji appearing for the respondents rests his contention that the appellant holds an office of profit under

the Government of India. Sub-section (1) thereof provides, among other things, that the auditors shall be appointed by LIC with the previous approval of the Central Government and shall receive such remuneration from LIC as the Central Government may fix. Two things therefore emerge. First: though LIC makes the formal appointment of its auditors, it has fetters imposed upon it. No previous approval of the Central Government, no appointment by the appointing authority, namely, LIC. So it is there for all to see that the Central Government's is the decisive voice in the appointment of auditors. Second: the remuneration the auditors will receive the Central Government fixes—not LIC. It is but another instance of the supreme voice the Central Government has in the matter.

The learned Advocate-General contends that neither the previous approval of, nor the fixation of remuneration by, the Central Government answers the question: whose auditor is the appellant of the Central Government or of LIC? Obviously, the contention runs, he is an auditor of LIC—a statutory body which makes the appointment, with the previous approval of the Central Government though. Such an approach merits more than one answer. In the first place, the appointment in form is no doubt made by L.I.C. But the appointment in substance is made by the Central Government. Say, the Central Government withholds its previous approval—a consideration which weighs with the Tribunal and which Mr. Hari Prosanna Mukherji makes a point of. Can LIC then make the appoint? The answer cannot be in doubt. It cannot. So the substance should prevail over the form. And it must be held that the real appointing authority is the Central Government. In the second place, by virtue of Article 102(1)(a) of the Constitution, the appellant will be disqualified for being chosen as a member of the *Lok Sabha* if he holds any office of profit under the Government of India other than an office declared by Parliament by law to disqualify its holder. Parliament has not declared by law the office we see here—the office of an auditor—not to disqualify its holder. That is the common submission made on behalf of the appellant and the respondents. The office of profit the appellant holds comes under the compendious expression: *any office of profit.* Does he hold it under the Government of India which is but another name of the Central Government? That is much the most important question for decision. The word used is *under.* Mr. Hari Prasanna Mukherji quotes the authoritative dictionary by Murry and Craigie, Oxford, according to which *under* means *subject to, denoting subjection to power or force exercised by some person or persons, beneath the rule or domination of.* That an authoritative lexicon can be pressed into service in interpreting a statute appears to be beyond argument. Craies on Statute Law, 5th edition, refers at page 152 to Camden (Marquies) *v.* L.R.C. [1914] 1 K.B. 641 where Cozens—Hardy, M.R. says at page 647:

> "It is for the Court to interpret the statute as best as it may. In so doing the Court may no doubt assist themselves in the discharge of their duty by any literary help they can find, including of course the consultation of standard authors and reference to well known and authoritative dictioneries."

So reference may be made to another great work: Modern English Usage [1959] by Fowler. At page 47-48 this authority on the English language says:

> "..... *under* like its contrary *over* is concerned with superposition and subjection and suggests some interrelation."

Superposition of the Government of India over the appellant in his appointment as an auditor of LIC is manifest. Equally manifest is his subjection to the Government of India in the appointment he is favour with, the remuneration he is allowed to draw and the sub-mission of a copy of the auditor report to the Central Government in terms of section 25(3) of the Life Insurance Corporation Act, 31 of 1956. And interrelation between one who dominates and one who is dominated is there too. So the appellant being an auditor of LIC (as the learned Advocate-General submits) and the appellant holding that office of profit under the Government of India (As Mr. Hariprasanna Mukherji contends) can stand together. The learned Advocate-General developing his contention propounds a test. If LIC will not pay the appellants his dues, whom will he sue? Sue he must LIC which is a body corporate having perpetual succession and a common seal and which may by its name sue and be sued [Section 3(2) *ibid*]. Because he has to sue so under the express provisions of law, neither superposition of the Central Government nor subjection to the Central Government as noticed vanishes. And the appellant, an auditor of LIC, holds this office of profit *under* the Central Government without whose pleasure he could not have been where he is and could not have either drawn the remuneration he is drawing. Another test the learned Advocate-General propounds is: where is the office of the appellant *qua* auditor? It is in LIC. What though that is so? To hold an office of profit under the Government of India one need not have his office in the secretariat buildings at New Delhi or in any building owned or rented by the Central Government. The very nature of the office the appellant holds under the Government of India demands that his office must be housed in LIC whose tomes of books and registers he has to scrutinize.

Location of the office contributes little here. In the third place, to accept the learned Advocate-General's contention is to ignore the object of the salutary provisions the like of which are in Article 102(1)(a) of the Constitution. CF. Article 191(1)(a) *ibid.* The object is to prevent a conflict between interest and duty. A member of a House of Parliament (here the House of the People or the *Lok Sabha*), as the appellant is, owing his appointment as an auditor of LIC and his remuneration to (Rs. 29,000/- for 1960—the amount is irrelevant) to the Government of India though from LIC's fund can hardly be expected to do his duty for which the electors have chosen him as a member. Appearances must necessarily be in favour of his trying to ingratiate himself with the executive, with the Government of India. Even the most lion-hearted will not have the heart to criticise the action of the Government in the House when criticism is due. He will therefore cease to be a lifemember alert to his duty. He will instead be a member who is 'dead' and unequal to his duty as a chosen one of the people. If it is said, though that has not been said, that the appellant is much more than lion-hearted ready to brave all sorts of perils affecting his personnal interest, the riposte is that Article 102(1)(a) *ibid* is such as taboos a member of either House of Parliament being "exposed to temptation or even to the semblance of temptation", to quote the words of Lord Esher, M.R. in Nutton *vs.* Wilson, L.R. [1889] 22 Q.B. 744, disqualifying a member of the local board by reason of being concerned in contracts entered into by the board. The principle is the same—be it a contract [cf. section 7(d) of the Representation of the People Act, 43 of 1951, read with Articles 102(1)(e) of the Constitution] or the holding of an office of profit under the Government. It admits of no compromise, not even a tinkering. The gist of the matter, be it said at the risk of repetition, is that the appellant shall be disqualified for being chosen a member of the *Lok Sabha* if he holds any office of profit under the Government of India. He does hold an office of profit under the Government of India. I have stated why. He shall therefore be disqualified for being chosen a member of the *Lok Sabha*. That is the mandate of the Constitution [Article 102(1)(a)] with a view to preventing a clash between duty and interest which is bound to arise and thus keeping the purity of Parliament unsullied. That mandate must receive effect—and not the learned Advocate-General's contention, if I may say so with respect.

If the appellant's case is so weak about LIC, how weaken still is it about Durgapore and Hindusthan, two Government companies within the meaning of sections 2(18) and 617 of the Companies Act, 1 of 1956. By their articles of association [Durgapore's article 152(a) and Hindusthan's article 143(a)], no less by section 619(2) *ibid*, the Central Government on the advice of the Comptroller and Auditor-General appoints or reappoints the appellant or the firm of which the appellant is a partner (it does not matter which) as the auditor of these two Government companies. No question of the previous approval rears its head here. It is a case of an appointment straightway. So the power of the Central Government to appoint the appellant to each of these two offices of profit appears to be clear enough. No less clear appears to be its power to continue him in that office. The word *reappoints* shows as much. The power to revoke this appointment is discernible too. In terms of section 16 of the General Clauses Act, 10 of 1897, the Central Government having the power to appoint the appellant as an auditor by virtue of authority concerned on it by section 619(2) of the Companies Act, 1 of 1956, has also the power to dismiss him in exercise of that power, unless of course a different intention appear. The learned Advocate-General contends that a different intention does appear in view of section 224(7) *ibid* which reads, in so far as it is material here:

224 * * * *

* * * *

(7).....any auditor appointed under this section may be removed from office before the expiry of his term only by the company in general meeting, after obtaining the previous approval of the Central Government in that behalf".

But the appellant is not appointed an auditor "under this section" namely section 224. He is appointed so under section 619)2) *ibid*. To that extent the power of the company to appoint an auditor under section 224(1) *ibid* is no more. Indeed, this [sub-section (1) of section 224] must yield in favour of section 619(2) *ibid* by the very terms of sub-section (1) thereof:

"619(1). In the case of a Government company, the following provisions shall apply, notwithstanding anything contained in section 224 to 233".

Sub-section (2) of section 619 is a provision that follows sub-section (1) *ibid*. This is how Mr. Hariprasanna Mukherji answers the learned Advocate-General's contention that sub-section (7) of section 224 manfests a contrary intention. It does not, according to him. Because the appointment of the appellant as an auditor is not under section 224.

The learned Advocate-General replies that section 619(2) is there in section 224 as its sub-section (1) by incorporation. Tentatively the position seems to be this. Section 224—233 enact general provisions about audit of companies. Section 619 enacts a spceial provisions about audit of Government companies. So the special enactment overrules the general enactment (though they are in the same Act) in so far as one is repugnant to the other. Repugnancy is seen in the manner of appointment of an auditor for a Government company and a non-Government company. Thus section 619(2) may be taken as being incorporated into section 224. If that is so, *under this section* in Section 224(7) will presumably not exclude section 619(2).

This need not, however, be pursued further. Because there is still another answer to the learned Advocate-Gencral's contention. The words—after obtaining the previous approval of the Central Government in that behalf—as they occur in section 224(7) *ibid* call attention. Approval not given by the Central Government, the company is powerless. It cannot dismiss the auditor. So the Central Government holds the whip and necessarily the real power of dismissal. And with respect, it does not appear to be correct to say, as the learned Advocate-General does, that all that the Central Government has in a power of mere appointment and no more. If Hindusthan or Durgapore will not allow the appellant to let in (an illustration the learned Advocate-General takes), will that require the previous approval of the Central Government? He submits, it will not; it will be a breach of contract, it is hardly necessary to enter into it. All that need be said is that if this sort of shutting out the auditor is tentamount to dismissal—and what else can it be?—the previous approval of the Central Government shall be required.

Thus, the two conclusions come to so far are that the power to appoint or reappoint the appellant as an auditor of Durgapore and Hindusthan and the power to dismiss him vest in the Central Government. Another matter remains to be noticed: the source where from the remuneration is drawn. The appellant is not, of course, paid from the consolidated fund of India. He is paid instead from the funds of Durgapore and Hindusthan. But that is a matter of minor importance when it is borne in mind that he earns his remuneration not because of Durgapore and Hindusthan but in spite of them. He earns what he gets as an auditor of these two Government companies, only because the Central Government has been pleased to appoint him as such.

It is now time to refer to authorities, though there are none determining for us the exact point we are now seized of. The starting point in a review of authorities must be the Supreme Court decision in Maulana Abdul Shakoor *vs.* Rikhab Chand and another reported in 13 E.L.R. 149: A.I.R. 1958 S.C. 52. It will be a profitless task to notice decision (of Election Tribunals) which precede it. Nor is it necessary to review the whole of the case law turning on the question of one being in the service of the Government. The point we have been called upon to decide is not that. It is whether or not the appellant holds an office of profit *under* the Government. The distinction between holding an office *under* the Government and being in the service of the Government is fundamental. The Advocate-General, for example (an illustration he himself gives), holds an office under the State Government but is not a Government servant. The Government Servant Conduct Rules do not apply to him, as he says. To return to Shakoor's case, denuded of details not material here, the facts are simple enough. Shakoor holds on a salary of Rs. 100/- a month the appointment of *mohatmin* (manager) in a school for teaching Persian, Arabic and Muslim theology—known as Madrasa Durgah Khawaja Sahib Akbari which was formerly under the Government of the Nizam of Hyderabad. The date of his filling the nomination paper that survives scrutiny by the returning officer is March 1, 1956. And the date of coming into force of the Durga Khawja Sahib Act, 36 of 1955, is exactly that: March 1, 1956. By virtue of section 11 thereof, the committee a statutory body created by this Act, has the power to appoint, suspend or dismiss servants of the Durga Endowment—of whom Shakoor is one. A servant of this committee which Shakoor becomes after the passing of the Act cannot be regarded as the holder of an office of profit under the Government of India, merely because the said Government has the power to appoint or supersede the committee (sections 5 and 8 *ibid*) and to interfere in other ways. The central facts emphasized are that the Government of India does not appoint Shakoor, cannot remove him and does not pay him from the revenues of India. It is accordingly held that Shakoor is not a holder of an office of profit under the Government of India and that Article 102(1)(a) of the Constitution cannot stand between him and his success at the election to the Council of States. Kapoor J. delivering the judgment of the Court goes a little more and lays down the law in the manner following at page 157:

"The power of the Government to appoint a person to an office of profit or

to continue him in that office of revoke his appointment at their discretion and payment from out of Government revenues are important factors in determining whether that person is holding an office of profit under the Government, though payment from a source other than Government revenue is not always a decisive factor."

Again at page 158:

".....the powers of appointment and dismissal by the Government or control exercised by the Government is an important consideration which determines in favour of the person holding an office of profit under the Government, but the fact that he is not paid out of the State revenue is by itself a neutral factor."

Translated to the facts before us, the power of appointment and dismissal of the appellant from the office he holds of an auditor of Durgapore and Hindusthan lies with the Central Government. The fact that he is paid not out of the consolidated fund of India but out of the funds of Durgapore and Hindusthan is not a decisive factor. A neutral factor, its importance appears to be practically nil in the circumstances here which look like an order on Durgapore and Hindusthan from the Government of India reading: Here is the auditor we have appointed under section 619(2) of the Companies Act, 1 of 1956. This is the remuneration we have fixed for him under section 224(8)(a) *ibid*. Pay him so.

The command on LIC reads almost that: under section 25 of the Life Insurance Corporation Act, 31 of 1956, we accord our approval to the appointment of the auditor you have proposed and this is the remuneration we fix. Pay him accordingly.

The only difference in the appointment of the appellant as an auditor of LIC is that LIC makes the formal appointment. But the appointment in substance is made by the Government of India. That denotes the power to appoint—the first "important factor" the Supreme Court lays down. And certainly it discloses "control exercised by" the Government of India which his Lordship (Kapoor, J.) holds to be "an important consideration".

To section 16 of the General Clauses Act, 10 of 1957, again. The power to appoint includes the power to dismiss. But LIC's power to appoint the appellant an auditor is not an absolute one. A condition precedent is attached to it: the previous approval of the Central Government. The power to dismiss must therefore be subject to the same condition which is impliedly there. LIC wanting to dismiss the appellant and the Central Government not agreeing, the appellant cannot be dismissed. So the power of dismissal is, in the ultimate analysis with the Central Government too. Thus the important factors the Supreme Court formulates with a view to determining whether or not a person holds an office of profit under the Government of India exists here also.

In Shakoor's case the Supreme Court notices the difference in language between Articles 58(2) and 66(4) of the Constitution on the one hand and Article 102(1)(a) *ibid* on the other and observes at page 154 of the report:

"Whereas in the case of the President and Vice-President the holding of an office of profit under an authority subject to the control of the Government is a disqualification, it is not so prescribed in the case of members of the Legislature".

The learned Advocate-General also invites our attention to this difference. But nothing turns on it. The appellant holds an office of profit under the Government of India for reasons set out above. Not that he holds an office of profit under an authority, such as LIC, Durgapore and Hindusthan, subject to the control of the Government of India.

Following Shakoor's case and relying on the tests laid down therein, the Bombay High Court disqualifies, under Article 191(1)(a) of the Constitution, an Employees' State Insurance medical practitioner who was accepted for service by the Surgeon-General, was removed by the State Government and had his remuneration (fixed by the State Government) partly met out of the revenues of the State: Dr. Deorao Lakshman Anande *v.* Keshav Lakshman Borkar: 13 E.L.R. 334.

Other cases referred to at the Bar on behalf of the appellant do not help. G. Narayanaswamy Naidu *v.* C. Krishnamurthi and another, 14 E.L.R. 21, is a Bench decision of the Madras Hight Court where Rajagopala Ayyangar J. delivering the judgment of the court holds after an elaborate discussion and after having noticed Shakoor's case that LIC is neither a department nor an agent of the Government and that service under LIC is not service under the Government and that service under LIC is not service under the Government of India within Article 191(1)(a) of the Constitution. In the case in hand the appellant cannot

flee Article 102(1)(a) *ibid* that way. Because the finding come to is that he holds offices of profit under the Government of India [*Tamlin v.* Hannaford 1950] 1 K.B. 18 holding that the Transport Commission is not an agent of the Crown merits a like treatment, no such question arising here on facts found. Equally ineffective is the reference to Subodh Ranjan Ghosh *v.* Sindri Fertilisers and Chemicals Ltd. and another, A.I.R. 1957 Patna 10 which is still another case to emphasize that servants of a body corporate like Sindri Fertilisers and Chemicals Ltd., a company having a separate legal entity, are not servants of the Union Government, even though the President of India in whom the ownership vests can issue directives upon the company which is bound to comply with them. The appellant before us is not being deprived of the fruits of his hard-fought election and the resulting success by 32,470 votes on anything like that. His election is being declared void on the ground that by the accepted tests referred to above he holds offices of profit under the Government of India and has therefore disqualified himself for being chosen as a member of the *Lok Sabha. Sm. Ena Ghosh* v *State of West Bengal and others* A.I.R. 1962 Calcutta 420, decides that the Vice-Principal of a women's college sponsored by the Government does not hold a civil post under the State within the meaning of Art. 311 of the Constitution, even though her appointment and conditions of service require the approval of the Government. To read more into it will be to misread it. The tests I have gone by to determine if the appellant holds an office of profit under the Government of India—tests which the Supreme Court calls "important factors", "important consideration"—stand. Sinha J. does not regard them as "conclusive" for the determination of the point before him. His Lordship prefers the test (also inconclusive) of "Governmental functions" which he considers to be the most satisfactory one on facts obtaining there and which he holds to mean the day by day executive administration of the Government. But the point for decision in this election appeal is whether or not the appellant holds an office of profit under the Government of India. The point for decision is not if the appellant is a servant of the said Government. So the outlook in the case before us is not the outlook in the case before Sinha, J.

In view of all that goes before, the conclusion I have reached is that the appellant as the auditor of LIC, Durgapore and Hindusthan holds offices of profit under the Government of India and that Article 102(1)(a) of the Constitution disqualifies him for being chosen as a member of the House of the people.

The appellant has still another hurdle to overcome and not overcome. The clear admission in paragraph 10B of his written statement is that he is nominated by the Government of West Bengal to be a member of the Board of Directors of the Corporation". (The West Bengal Financial Corporation come into being under Section 3 of the State Financial Corporation Act, 63 of 1951, has been shortened into "the Corporation"). The admission concludes: "He (the appellant) is paid remuneration for attending the Board and committee meetings out of the funds of the Corporation". By averring so the appellant relieves his adversaries of the onus that lies on them and almost proves their case. Almost, because in spite of this averment it is open to the appellant to prove that the remuneration he is paid is not by way of profit but as "the out-of-pocket expenses which he has to incur" for attending the meetings of the board and the committee, as in Ravanna Subanna *v.* G. S. Kaggeerappa, A.I.R. 1954 S.C. 653. But he does not examine himself nor any witness at the trial, though the Tribunal goes out of its way to afford him an added opportunity to do so. A party, he does not pledge his oath on a matter which is within his special knowledge. That is the strongest possible circumstances going to discredit the truth of his case that the office of a nominated director of the Corporation (which he holds) is not an office of profit [Murugesam Pillai *v.* D. Gnana Sambandha Pandara Sannadhi: 44 I.A. 98, Gurbaksh Singh *v.* Gurdial Singh and another: 32 C.W.N. 119 (P.C.) and Mt. Lal Kunwar *v.* Chiranji Lal: 37 A.A.I.] To this be added that under section 16 *ibid* such a one, not the managing director nor a servant of the State Government, shall be paid fees for attending meetings of the board and the executive committee of which he is apparently a member, as the use of the expression "committee meetings" in the written statement goes to suggest. Section 12(a) *ibid* the learned junior counsel for the appellant (Mr. Ghose) refers to cannot help matters forward for him. It is nobody's case that the appellant is a salaried official of the Corporation. A managing director he is not. He has therefore rightly been a director, without coming on the edge of Section 12(a). But as a director he earns fees, section 16 *ibid* providing so. The same questions therefore arise; what fees? Only for reimbursement of actual expenses incurred for attending the meetings or something more? It may therefore be presumed that had the appellant stepped into the witness box (which he deliberately avoided in spite of the Tribunal having been so generous to him), he could not have supported his case of the office of a director of the

Corporation not being an office of profit. By parity of reasoning the appellant cannot take refuge under 'compensatory allowance', as defined in section 2(a) of the Parliament (Prevention of Disqualification) Act, 10 of 1959. There is not even a soupcon of evidence on which a finding of his fees being a compensatory allowance can rest. So the contention to that effect must fail. The other ingredients under Article 102(1)(a) of the Constitution are there only to be seen. The State Government nominates the appellant as a director [Section 10(a) of the State Financial Corporation Act, 63 of 1951]. In plain language, it means that the State Government appoints him a director of an office which he holds during the pleasure of the said Government [Section 11(1) *ibid*]. The State Government may remove him Section 13 (*ibid*). Resign if he will, he must give notice thereof in writing to the State Government (Section 11 *ibid*). Nothing more requires to be said to find that the appellant holds this office of profit, the office of a director of the Corporation, very much under the State Government. Once that is found, Article 102(1)(a) re-appears to disqualify him for being chosen a member of the House of the People, though Section 7(e) of the Representation of the People Act, 43 of 1951, will not, as contended by the learned Advocate-General, conceded by Mr. Hariprasanna Mukherji and found by the Tribunal. It will not, because for this Parliamentary election the State Government is not the appropriate Government within the meaning of Section 7(e) read with Section 9(1)(a) *ibid*. The Central Government is. But it has no share in the Corporation—not to speak of 25% share.

For these reasons I am for dismissing the appeal as my learned brother is—and in the manner proposed by him.

True Copy

(Sd.) Assistant Registrar.

[No. 82/111/62.]

New Delhi, the 29th May 1963

S.O. 1541.—In exercise of the powers conferred by sub-section (1) of section 13A of the Representation of the People Act, 1950 (43 of 1950), the Election Commission, in consultation with the Government of Madhya Pradesh, hereby nominates Shri R. G. Trivedi, as the Chief Electoral Officer for the State of Madhya Pradesh with effect from the forenoon of 13th May, 1963 *vice* Shri M. S. Chaudhary proceeded on leave.

[No. 154/6/63.]

By Order,

PRAKASH NARAIN, Secy.

MINISTRY OF HOME AFFAIRS

New Delhi, the 30th May, 1963

S.O. 1542.—In pursuance of paragraph 3 of the Foreigners (Restricted Areas) Order, 1963, the Central Government hereby makes the following amendment in the notification of the Government of India in the Ministry of Home Affairs No. S.O. 1337 dated the 10th May, 1963, namely:—

In the Schedule to the said notification, in column (2) against "State of West Bengal", for entry (2), the following entry shall be substituted, namely:—

"(2) Deputy Inspector General of Police, Intelligence Branch, Criminal Investigation Department, Government of West Bengal".

[No. F. 6/176/62-F.I.]

T. K. RAMAKRISHNAN, Under Secy.

New Delhi, the 31st May 1963

S.O. 1543.—In exercise of the powers conferred by clause (1) of article 258 of the Constitution and in supersession of the notification of the Government of India in the *late* Ministry of States No. 228-J dated the 2nd December, 1952, the President hereby entrusts to the Government of Kerala, with their consent, the functions of the Central Government under the Kerala land Acquisition Act, 1961 (Kerala Act 21 of 1962) in relation to acquisition of land in the State of Kerala for the purposes of the Union.

[No 2/4/63-Judl.II.]

B. SHUKLA, Dy. Secy.

New Delhi, the 1st June 1963

S.O. 1544.—By virtue of the powers conferred under section 41 (a) of the Arms Act, 1959, the Central Government is pleased to exempt General J. N. Chaudhuri, Chief of the Army Staff, his wife and party (consisting of about seven members) from the operation of the prohibitions imposed under the Arms Act and the rules framed thereunder in respect of possession and carrying on, and export out of, India *two* shot guns and *three* Carbines machines by air on or about the 4th June, 1963.

[No. 38/23/63-P.IV.]

L. I. PARIJA, Dy. Secy.

MINISTRY OF COMMERCE AND INDUSTRY

New Delhi, the 27th April 1963

S.O. 1545.—In exercise of the powers conferred by the proviso to article 309 of the Constitution, the President hereby makes the following rules to amend the Junior Field Officers and Investigators (Small Scale Industries Organisation) Recruitment Rules, 1962, published with the notification of the Government of India in the Ministry of Commerce and Industry No. S.O. 2966, dated the 18th September 1962, namely:—

1. These rules may be called the Junior Field Officers and Investigators (Small Scale Industries Organisation) Recruitment (Amendment) Rules, 1963.

2. They shall be deemed to have come into force on the 18th September, 1962.

3. In the Junior Field Officers and Investigators (Small Scale Industries Organisation) Recruitment Rules, 1962, the Column 11 of each of the Schedules I to III annexed thereto, against the post of Junior Field Officer for the words and brackets:

"By promotion of Investigators with five years service in the grade (including probationary period)" wherever they occur the following shall be substituted, namely:—

"By promotion of Investigators with three years service in the grade (including probationary period)".

[No. F. 3-SSI(C)(14)/62.]

V. C. NAIDU, Under Secy.

New Delhi, the 27th May, 1963.

S.O. 1546.—In exercise of the powers conferred by section 10 of the Khadi and Village Industries Commission Act, 1956 (61 of 1956), read with rules 13 and 14 of the Khadi and Village Industries Commission Rules, 1957, the Central Government hereby appoints Sarvashri Mahendra Mohan Chaudhary and Amrit Lal Yadav as members of the Khadi and Village Industries Board and directs that the following amendment shall be made in the Notification of the Government of India in the Ministry of Commerce and Industry No. S.O. 1240, dated 27th April, 1963, namely:—

In the said Notification, after Serial No. 44 and the entries relating thereto, the following Serial Nos. and entries shall be inserted, namely:—

1	2	3
45.	Shri Amrit Lal Yadav B-13, M.L.A. Quarters, Jaipur.	27-5-1963
46.	Shri Mahendra Mohan Chaudharp, Speaker, Assam Legislative Assembly, Gauhati.	27-5-196 ".

[No. 41/4/62-KVI(P).]

H. K. BANSAL, Under Secy.

New Delhi, the 28th May, 1963

S.O. 1547.—In exercise of the powers conferred under sub-section (1) of section 6 of the Central Silk Board Act 1948 the Central Government hereby appoints Shri T. S. Pattabhiraman, Member, Rajya Sabha and Member of the Central Silk Board as Vice-Chairman of the Central Silk Board with immediate effect and upto the 8th April, 1964.

[No. F. 22/1/61-HS(2).]

R. KALYANASUNDARAM, Under Secy.

(Department of Company Law Administration)

New Delhi, the 28th May 1963

S.O. 1548.—Shri B. J. Rele, Assistant Official Liquidator, High Court, Bombay has been granted earned leave for thirteen days with effect from 20th May, 1963 with permission to suffix holidays the 2nd and 3rd June, 1963 to the leave.

[No. PFG(110)-CLA/60.]

P. B. SAHARYA, Under Secy.

(Office of the Dy. Chief Controller of Imports and Exports)

(Central Licensing Area)

ORDER

New Delhi, the 22nd May 1963

S.O. 1549.—Whereas M/s. Khosla Sewing Machine Co., Naya Ganj, Ghaziabad or any Bank or any other person have not come forward furnishing sufficient cause, against Notice No. DCCI. I(CLA)/153/62/1130, dated 13th May 1963 proposing to cancel licence No. A-664781/61, dated 26th March 1962 for import of Domestic Sewing Machine Parts for Rs. 19,700/- granted to said M/s. Khosla Sewing Machine Co., Naya Ganj, Ghaziabad by the Deputy Chief Controller of Imports & Exports (Central Licensing Area), Janpath Barracks 'B', New Delhi, Government of India in the Ministry of Commerce and Industry in exercise of the powers conferred by the Clause 9 of the Import (Control) Order 1955, hereby cancel the said licence No. A-664781/61, dated 26th March 1962 issued to M/s. Khosla Sewing Machine Co., Naya Ganj, Ghaziabad.

[No. DCCI. I(CLA)/153/62.]

NOTICES

New Delhi, the 29th April, 1963

S.O. 1550.—It is hereby notified, that in exercise of the powers conferred by Clause 9 of the Imports (Control) Order 1955, the Government of India, in the Ministry of Commerce and Industry propose to cancel the import licence No. A-570433/62, dated 4th March 1963 for Rs. 750/- for the import of Palm Oil granted by the Deputy Chief Controller of Imports and Exports (Central Licensing Area), New Delhi to M/s. Milap Soap Factory, Hissar Road, Rohtak (Punjab) unless sufficient cause against this is furnished to the Deputy Chief Controller of Imports & Exports (Central Licensing Area), New Delhi within ten days of the date of issue of this Notice by the said M/s. Milap Soap Factory, Hissar Road, Rohtak (Punjab), or any Bank or any other party who may be interested in it.

2. The grounds of the proposed cancellation of the licence in question is that Director of Industries, Punjab has informed that the concern of M/s. Milap Soap Factory, Hissar Road, Rohtak has since been closed down.

3. In view of what is stated above, M/s. Milap Soap Factory, Hissar Road, Rohtak or any Bank or any other party who may be interested in the said licence No. A-570433/62, dated 4th March 1963 are hereby directed not to enter into any commitments against the said licence and return the same immediately to the Deputy Chief Controller of Imports and Exports (Central Licensing Area), New Delhi-1.

[No. DCCI. I(CLA)/188/63/409.]

New Delhi, the 17th May 1963

S.O. 1551.—It is hereby notified that in exercise of the powers conferred by Clause 9 of the Imports (Control) Order 1955, the Government of India, in the Ministry of Commerce and Industry propose to cancel the import licence No. A 667142/61, dated 2nd February 1962, valued at Rs. 10,000 for the import of Sewing Machines Parts granted by the Dy. Chief Controller of Imports and Exports (Central Licensing Area) N. Delhi to M/s. Saroj Industries, Industrial Estate, Srinagar (Kashmir) unless sufficient cause against this is furnished to the Dy. Chief Controller of Imports and Exports (Central Licensing Area), N. Delhi, within ten days of the date of issue of the Notice by the said M/s. Saroj Industries, Industrial Estate, Srinagar (Kashmir) or any Bank or any other party, who may be interested in it.

2. The grounds of the proposed cancellation of the licence in question are that the licence No. A 667142/61, dated 2nd February 1962 has been obtained by fraud and mis-representation.

3. In view of what is stated above M/s. Saroj Industries, Industrial Estate, Srinagar (Kashmir) or any Bank or any other party who may be interested in the said licence No. A 667142/61, dated 2nd February 1962 are hereby directed not to enter into any commitments against the said licence and return the same immediately to the Dy. Chief Controller of Imports and Exports (Central Licensing Area), New Delhi.

M/s. Saroj Industries,
Industrial Estate,
Srinagar (Kashmir).

[No. DCCI. I(CLA)/237/62.]

RAM MURTI SHARMA,
Dy. Chief Controller of Imports and Exports.

MINISTRY OF HEALTH

New Delhi, the 23rd May 1963

S.O. 1552.—In exercise of the powers conferred by clause (2) of Article 77 read with clause (1) of Article 299 of the Constitution of India, the President hereby directs that the following instruments may be executed on his behalf at Tokyo by Srj A. S. Baghel, Deputy Secretary to the Government of India in the Ministry of Health, New Delhi:—

"Agreement with the Japanese Leprosy Mission for Asia (JALMA), Tokyo, Japan, for providing assistance for the establishment of a leprosy treatment, rehabilitation, training and research centre at Taj Ganj, District Agra, Uttar Pradesh."

[No. F. 20-17/61-MIII.]

G. MUKHARJI, Jt. Secy.

MINISTRY OF TRANSPORT & COMMUNICATIONS

(Department of Transport)

(Transport Wing)

New Delhi, the 29th May 1963

S.O. 1553.—In exercise of the powers conferred by sub-section (3) of section 214 of the Merchant Shipping Act, 1958 (44 of 1958), the Central Government hereby directs that in the Union Territory of Goa, Daman and Diu, the Director of Civil Administration, Panjim, Goa, shall be the proper officer to whom certified copies of the returns in respect of births and deaths of citizens of India on board Indian ships shall be transmitted for preservation as a permanent record.

[No. 30-ML(6)/60.]

J. V. DASS, Under Secy.

(Department of Transport)

(Transport Wing)

MERCHANT SHIPPING

New Delhi, the 31st May 1963

S.O. 1554.—In exercise of the powers conferred by Rule 5 of the Indian Merchant Shipping (Seamen's Employment Office, Bombay) Rules, 1954, the Central Government hereby appoints S/Shri J. W. Anson, J. P. Mason Price and D. Almedia as members representative of the Shipowners and Seafarers in places of S/Shri S. P. Plested, W. H. Dalton and O. C. Mendes respectively on the Seamen's Employment Board (Foreign-going) at the port of Bombay and make the following amendments in the Notification of the Government of India in the Ministry of Transport and Communications (Department of Transport) No. 15-MT(6)/60, dated the 3rd July, 1961.

2. In the said notification for entries 6, 8 and 13, the following entries shall be substituted:—

(6) Shri J. W. Anson.

(8) Captain J. P. Mason Price.

(13) Shri D. Almedia.

[No. 15-MT(6)/60.]

D. S. NIM, Dy. Secy.

MINISTRY OF SCIENTIFIC RESEARCH AND CULTURAL AFFAIRS

ARCHAEOLOGY

New Delhi, the 30th May 1963

S.O. 1555.—Whereas the Central Government is of opinion that the archaeological site and remains specified in the Schedule attached hereto is of national importance.

Now, therefore, in exercise of the power conferred by sub-section (1) of section 4 of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958), the Central Government hereby gives notice of its intention to declare the said archaeological site and remains to be of national importance.

Any objection made within two months of the issue of this notification by any person interested in the said archaeological sites and remains will be considered by the Central Government.

SCHEDULE

Sl. No.	State	District	Tahsil	Locality	Name of site	Revenue plot number to be included under protection	Area	Boundaries	Ownership
1	2	3	4	5	6	7	8	9	10
1.	Maharashtra	Ahmadnagar	Shrirampur	Daimabad village Ladgaon.	Ancient site & remains at Daimabad comprised in whole of survey plot Nos. 59/128, 60/129, 52/121 and Gaothan land.	Whole of survey plot Nos. 59/128, 60/129, 52/121 and Gaothan land.	51 Acres and 20 Gunthas.	North :—Road. East :—Survey plot Nos. 15/120, 1/71 and 2/71. South :—Pravara river. West :—Pravara River and Road.	Government.

[No. F. 4-14/63-C.I.]

S. J. NARSIAN,
Assistant Educational Adviser.

MINISTRY OF RAILWAYS

(Railway Board)

ORDER

New Delhi, the 30th May 1963

S.O. 1556.—In exercise of the powers conferred by sub-section (1) of section 40 of the Defence of India Act, 1962, (51 of 1962), and of all the powers enabling it in this behalf, the Central Government hereby directs that the powers exercisable by it under sub-rule (2) of rule 134-A of the Defence of India Rules, 1962, shall also be exercisable, in any case where an order of eviction has been made under sub-rule (1) of that rule by the officers mentioned in column (2) of the Schedule annexed with the Government Order No. G.S.R. dated 26th March 1963 in respect of the public premises specified in column (3) of the said Schedule.

[No. 62/W2/LA/15.]

P. C. MATHEW, Secy.

DELHI DEVELOPMENT AUTHORITY

New Delhi, the 28th May, 1963.

S.O. 1557.—In pursuance of the provisions of sub-section (4) of Section 22 of the Delhi Development Act, 1957, the Delhi Development Authority has replaced at the disposal of the Central Government the land described in the schedule below for placing it at the disposal of the Land and Development Officer, Ministry of Works Housing, and Supply, Government of India, New Delhi.

SCHEDULE

Piece of land measuring 1000 sq. yds. bearing khasra Nos. 939/29 & 943/29 situated in Lakkar Mandi, Qadam Shariff Estate.

The above piece of land is bounded as follows:—

NORTH: 938/29.

SOUTH: 944/29.

EAST: Road.

WEST: 940/29, 941/29, 942/29.

[No. L.2(27)59-Pt.]

CORRIGENDUM

S.O. 1558.—In Chief Commissioner's notification No. F.1(55)/9-LSG(I), dated 20/22nd January, 1949 under the provisions of Sub-section (2) of Section 54-A (2) of the Town Improvement Act, 1919 (VIII of 1919) as extended to the Province of Delhi; in 7 of the Notification for '6·22 acres' read '6·23 acres' and in the Schedule after Sl. No. 5, add serial No. 6 as below:—

6.	15 B	Whole block.

[No. L.27(350)48.]

R. K. VAISH, Secy.

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 28th May 1963

S.O. 1559/PWA/Min/Rules/Am.—The following draft of rules further to amend the Payment of Wages (Mines) Rules, 1956, which the Central Government proposes to make, in exercise of the powers conferred by sub-sections (2), (3) and (4) of section 26, read with section 24, of the Payment of Wages Act, 1936 (4 of 1936), is published, as required by sub-section (5) of the said section 26, and notice is hereby given that the said draft will be taken into consideration on or after the 5th September, 1963.

2. Any objections or suggestions which may be received from any person with respect to the said draft before the date so specified will be considered by the Central Government. Such objections or suggestions should be addressed to the Secretary to the Government of India, Ministry of Labour and Employment, New Delhi-1.

DRAFT RULES

(1) These Rules may be called the Payment of Wages (Mines) Amendment Rules, 1963.

(2) In the Payment of Wages (Mines) Rules, 1956, hereinafter referred to as the said rules, in rule 2,—

(i) after clause (a), the following clause shall be inserted, namely:—

(aa) "agent" means an agent as defined in clause (c) of section 2 of the Mines Act, 1952 (35 of 1952);

(ii) after clause (i), the following clause shall be inserted, namely:—

"(ii) 'manager' means the person appointed under section 17 of the Mines Act, 1952 (35 of 1952) to discharge the functions of a manager;"

(iii) after clause (j), the following clause shall be inserted, namely:—

"(jj) 'owner' means the owner as defined in clause (1) of section 2 of the Mines Act, 1952 (35 of 1952);".

(3) After rule 2 of the said rules, the following rule shall be inserted as rule 2A, namely:—

"2A. *Notice of opening, abandonment, discontinuance, re-opening and change in the ownership and addresses etc.*

(1) When a mine has been opened, the owner, agent or manager shall forthwith communicate the actual date of opening to the Regional Labour Commissioner in Form A.

(2) When it is intended to abandon a mine or seam or to discontinue working thereof for a period exceeding 60 days, the owner, agent or manager shall not less than 40 days, before such abandonment or discontinuance, give to the Regional Labour Commissioner a notice stating the reasons for the proposed abandonment or discontinuance and the number of persons likely to be affected thereby:

Provided that when on account of unforeseen circumstances a mine is abandoned or discontinued before the said notice has been given or when without previous intention the discontinuance extends beyond a period of 60 days, the notice shall be given forthwith.

(3) When a mine or seam has been abandoned, or the working thereof has been discontinued over a period exceeding 60 days, the owner, agent or manager shall, within seven days of the abandonment or the expiry of the said period, give to the Regional Labour Commissioner, notice in Form A.

(4) When it is intended to re-open a mine or seam after abandonment or after discontinuance for a period exceeding 60 days, the owner, agent or manager shall, not less than 30 days before resumption of mining operations, give to the Regional Labour Commissioner notice in Form A.

(5) When a mine has been re-opened, the owner, agent or manager of the mine shall forthwith communicate the actual date of re-opening to the Regional Labour Commissioner.

(6) When a change occurs in the name or ownership of a mine or in the address of the owner, the owner, agent or manager shall, within seven days from the date of change, give to the Regional Labour Commissioner a notice in Form A:

Provided that where the owner of a mine is a firm or other association of individuals, a change—

(i) of any partner in the case of a firm;

(ii) of any member in the case of an association;

(iii) of any director in the case of a public company; or

(iv) of any shareholder in the case of a private company;

shall also be intimated to the Regional Labour Commissioner, within seven days from the date of the change."

(4) In rule 22 of the said Rules, after the word "rule", the figure and letter '2A" shall be inserted.

(5) Before Form I of the said rules, the following form shall be inserted as Form A, namely:—

"FORM A

(*See* Rule 2A)

Notice of opening, abandonment, discontinuance, re-opening and change in the ownership and addresses etc.

From

.....

.....

To

The Regional Labour Commissioner (C)

.....

Sir,

I have to furnish the following particulars in respect of*..... at..... (mine) of..... (owner).

1. In case of change of name of mine:

Old name of mine..... date of change.....

2. (a) Situation of the mine: Village..... Police Station..... Sub-Division (Taluk)..... District..... State.....

(b) In the case of a new mine, particulars of situation of mine:

Post Office..... Telegraph Office..... Railway Station..... Rest House..... (*Give distances therefrom*) Means of travelling .....

3. (a) Name and Postal address of Present† Previous

(i) Owner.....

(ii) Managing agent, if any.....

(iii) Agent, if any.....

(iv) Manager.....

(b) In case of change, date of change.....

4. Date on which it is intended to open/re-open/abandon/discontinue% the mine.....

5. Actual date of opening/re-opening/abandonment/discontinuance% of the mine.....

Yours faithfully,

Signature.....

Designation: Owner/Agent/Manager.

Date.....

INSTRUCTIONS

*Mention the matter to which the notice refers.

†To be filled in only when the notice refers to a change, and only against the item in respect of which notice is given.

%Delete whatever is not applicable."

[No. 546/163/61-Fac.]

P. D. GAIHA, Under Secy.

New Delhi, the 29th May, 1963

S.O. 1560.—In exercise of the powers conferred by section 73-F of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby exempts Shri Mijjumal Gillumal Cotton Ginning and Pressing Factory, Hathras from the payment of employers' special contribution leviable under Chapter VA of the said Act for a further period upto and including the 30th April, 1964.

[No. F. 6(94)/63-HI.]

O. P. TALWAR, Under Secy.

New Delhi, the 29th May, 1963

S.O. 1561.—In pursuance of section 17 of the Industrial Disputes Act, 1947, (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Dhanbad, in the industrial dispute between the employers in relation to the Madhuband Colliery and their workmen.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, DHANBAD

REFERENCE No. 25 OF 1962

PARTIES.

Employers in relation to the Madhuband Colliery.

AND

Their workmen.

PRESENT:

Shri Raj Kishore Prasad, M.A., B.L.,—*Presiding Officer.*

APPEARANCES:

For the Employees.—Shri S. V. R. Acharlar, with Shri Gurubachan Singh.

For the Employees.—Shri S. V. R. Acharlar, with Shri Gurbachan Singh.

STATE: Bihar. INDUSTRY: Coal.

Camp: *Patna, dated the 8th March, 1963*

AWARD

The Ministry of Labour and Employment, Government of India, by its Order No. 2/228/61-LRII, dated the 9th August, 1962, referred, under Section 10(1)(d) of the Industrial Disputes Act, 1947, the following industrial dispute to this Tribunal for adjudication:

> "Whether or not the transfer of Sardar Jagir Singh, Underground Incharge from Madhuband Colliery to Central Sounda Colliery and his ultimate discharge from service was legal and justified. If not, to what relief is he entitled?".

2. On behalf of the workman concerned, Hindusthan Khan Mazdoor Sangh filed his statement of demands on 20th August, 1962. The management also filed its written statement, by way of a rejoinder, on 30th August, 1962.

3. The case of the concerned workman in his written statement is that he was appointed by Jharia and Raniganj Collieries Limited, which has now merged with Oriental Coal Co., Ltd., on 30th July, 1956, with effect from 1st August, 1956, as a Welfare Officer Under Training, at their Madhuband Colliery, under the Managing Agency of Messrs. Karam Chand Thapar and Brothers Limited, and his services were to be in continuation of his services with his previous employer, The Real Jambad Coal Company Limited; that on 12/15 July 1958 he was transferred to Central Sounda Colliery of United Collieries Limited, which is a different Colliery, to which he protested, and, therefore, the management on 5/6 August, 1958, withdrew its order of transfer and allowed him to work at Madhuband Colliery; that as he was denied by the management of certain legitimate rights pertaining to increment, leave, etc., he represented the matter to the Chief Labour Commissioner. (Central) who advised him to move the Union concerned, but this was not liked by the management; that he, in August, 1959, became a member of the Hindusthan Khan Mazdoor Sangh and organised its branch in Madhuband Colliery, in

1959 and was elected its Secretary; that, due to his this trade union activity, the management was displeased with him, and, therefore, on 15th September, 1959, he was transferred to Central Saunda Colliery, which was not a part of Madhuband Colliery, in spite of the fact that Madhuband and Central Sounda Collieries were owned by two altogther separate Companies, but under the same managing agency; that his transfer from Madhuband Colliery to Central Sounda Colliery was *malafide* and illegal and intended to victimise him for his trade union activities; that he, therefore, protested against his illegal and *malafide* and unjust transfer and the matter was taken up later by The Hindusthan Khan Mazdoor Sangh, but, while this matter was pending before the Conciliation Officer he was discharged from service from 9th December, 1959, by the Agent of the Madhuband Colliery; that, therefore, his transfer and his ultimate discharge were illegal and unjustified, and, therefore, should be set aside and he should be reinstated with full back wages.

The case of the management in its written statement is that the concerned workman was appointed as a Trainee with effect from 13th November, 1953, under the terms and conditions contained in the Service Rules of Messrs. Karam Chand Thapar and Brothers Limited (Exhibit M) and was posted at Real Jambad Colliery; that as he did not obtain Mining Sirdar's Certificate he was transferred in August 1956 to Madhuband Colliery, which was also being controlled and managed by Messrs. Karamchand Thapar, as Welfare Officer Under Training, without affecting his service condition applicable to him; that on 12/14 September 1959, he was transferred to Central Saunda Colliery to work in the same capacity without affecting his service conditions, as Central Saunda Colliery was also being controlled and managed by Messrs. Karam Chand Thapar; that the concerned workman by his letter dated 17th September 1959 challenged the said order of transfer but the management by its Order dated 21/22 September 1959 and 22nd October, 1959, explained to him the Service Rules governing him and asked him to abide by the order of transfer which was perfectly legal and valid; that, in spite of repeated chances being given to him, he failed to obey the order of transfer, and, therefore, he was dismissed by a letter dated 9th December, 1959; that, therefore, on these grounds, as his transfer was in terms of the Service Rules of Messrs. Karam Chand Thapar, Exhibit M; it was legal and justified and, consequently, his discharge, due to the disobedience of the said order of transfer, was also justified and legal.

4. The management, in support of its case, examined the Head Clerk of its Madhuband Colliery, Shri Makhan Lal Lodh, M.W. 1, and, filed several documents, which were marked *Exhibits M to M. 32.* Amongst these documents, the Service Rules of Messrs. Karam Chand Thapar, as amended upto 15th November 1957, are Exhibit M, and, the Standing Orders of Madhuband Colliery, certified on 26th February, 1960, are Exhibit M. 4.

5. The concerned workman examined himself as W.W. 1, and also examined Sri S. V. Acharlar, General Secretary of the Hindusthan Khan Mazdoor Sangh, as W.W. 2, and, filed several documents, which were marked *Exhibits W to W. 18.* Amongst these documents, the Standing Orders for the Coal Mining Industry, as certified by the Chief Labour Commissioner (Appellate Authority) on 8th April 1950, is *Exhibit W. 17.*

6. On the present reference, the principal question which call for a decision, are really two, namely, (1) If the transfer of the concerned workman was legal, and, if so, whether it was justified; and, (2) Whether the discharge of the workman concerned was legal, and if so, whether it was justified.

7. We are concerned here with three Collieries, namely, (1) Madhuband Colliery, (2) Central Saunda Colliery, and, (3) The Real Jambad Colliery. The admitted facts regarding these three Collieries, are these:

Madhuband Colliery:

The owners of this Madhuband Colliery are *Jharia and Raniganj Collieries, Limited,* (Exhibit W. 1) which have now merged with Oriental Coal Co. Ltd. of Calcutta and the Managing Agents of Jharia & Raniganj Collieries Limited are Messrs. Karam Chand Thapar and Bros. Ltd. (Vide Exhibit W.). The Secretary and Treasurer of this Madhuband Colliery as also its Managing Agents were Messrs. Karam Chand Thapar & Bros. Ltd. (Vide Exhibit W. 1).

Central Saunda Colliery:

The owners, of this Colliery are *United Collieries Limited* and its Managing Agents are Messrs. Karam Chand Thapar & Bros. Ltd.

The Real Jambad Colliery:

This Colliery is not under the managing agency of Messrs. Karam Chand Thapar (Exhibit W. 13), but the latter is the Secretary and Treasurer of The Real Jambad Colliery as also of Madhuband Colliery.

From the above admitted facts, it is clear that Messrs. Karam Chand Thapar are the Managing Agents of Madhuband Colliery and Central Saunda Colliery but not of The Real Jambad Colliery of which they are only Secretary and Treasurer and further that they are not the owners of any of the three above mentioned Collieries.

8. Sri S. S. Kapur, appearing for the management, contended that the workman concerned was governed by the Service Rules of Messrs. Karam Chand Thapar, Exhibited M, and, therefore, he was liable to be transferred under Rule 4(b) of the said Rules from the Madhuband Colliery to the Central Saunda Colliery, as Messrs. Karam Chand Thapar were the Managing Agents of both, and, accordingly, he was transferred thereunder, and, as such, his transfer was legal and justified, and, consequently, because he disobeyed the order of transfer, he was discharged from service, which was also perfectly legal and justified. He, further, contended that although Messrs. Karam Chand Thapar were not the owners of any of the three Collieries, mentioned above, but because the workman concerned accepted to be governed by the Service Rules Exhibit M of Messrs. Karam Chand Thapar, as will appear from para 2 of Exhibit M. 15, he cannot now challenge his transfer or his discharge in consequence of his disobedience of the said order of transfer.

9. Sri Gurbachan Singh, who appeared for the concerned workman, combated the above contentions by countering that the Service Rules, Exhibit M, of Messrs. Karam Chand Thapar did not at all apply to the workman concerned, and, that as neither The Real Jambad Colliery had its own Standing Orders in 1953 when the concerned workman was first appointed there, nor the Madhuband Colliery had its own Standing Orders in 1959 when he was transferred, there from the Real Jambad Colliery, he was governed by the Standing Orders for the Coal Mining Industry which were certified on 8th April 1950, Exhibit W 17, and which applied to the above three collieries also in the absence of their own Standing Orders, which admittedly they had none at the material times, and Ext. W. 17 provided in Rule 26 that workmen are liable to be transferred from one Colliery to another *only when both the Collieries were under the same Management* and when such transfers did not cause any prejudice to their wages and other conditions of service, and, therefore, as in the instant case, the workman concerned has been transferred, in contravention of Rule 26 of the said Standing Orders for the Coal Mining industry, Exhibit W. 17, his transfer was illegal and void, and consequently he was justified in not obeying the said illegal order of transfer, and, as such, his discharge from service was also illegal and not justified.

10. From the above arguments presented on behalf of both the parties, it is plain that the crucial point, rather the crux of the matter, is whether the concerned workman was governed by the Service Rules of Karam Chand Thapar, Exhibit M, as contended by the management? If this question is answered in the negative, then, as was frankly admitted also by Sri Kapur, on behalf of the management, the transfer of the workman concerned would be illegal and unjustified, and, consequently, his discharge for disobedience of the said order of transfer also would be illegal and unjustified.

11. In order, however, to appreciate the points raised by the parties it is necessary to know the undisputed facts of the case, and the circumstances in which the present industrial dispute arose, which were relied upon by both the parties. These facts may be stated in their chronological order as below:

(a) On 13th November 1953 the workman concerned was appointed as a Trainee in The Real Jambad Colliery, as will appear from his letter of appointment, Exhibit M. 15. Para 2 of this letter, Exhibit M. 15, which was strongly relied upon, on behalf of the management, stated that "Your appointment will be governed by our service rules as may be in force from time to time." It may be stated, at this very stage, that there is no evidence to show, what then in 1953 the Service Rules of The Real Jambad Colliery were and if the Service Rules of Messrs. Karam Chand Thapar, Exhibit M, were applicable to and in force in the said Colliery and its employees were to be governed by the said Service Rules, Exhibit M;

(b) On 19th July 1956, as will appear from Exhibit M. 10, the concerned workman was transferred to the Madhband Colliery from The Real Jambad Colliery and

on 22nd July 1956, by Exhibit M. 10, he was asked to proceed with immediate effect to Madhuband Colliery. Exhibit W shows that an office order was passed on 30th July 1956 to the effect that by mutual consent, the appointment of Sardar Jagir Singh, the concerned workman, a Welfare Officer Under Training at Madhuband Colliery was confirmed with effect from 1st August 1956. Exhibit W, further, says that for the purposes of length of service, etc., the appointment of the workman concerned in the Madhuband Colliery shall be taken as in continuation of his services with his previous employer, The Real Jambad Coal Co. Ltd.;

(c) Exhibit W. 13 dated 6th February 1958 which is a letter from the General Secretary, Colliery Administration Department, Secretariat Department, of the management, regarding the workman concerned, states *inter alia*, that:

> "Since Real Jambad Coal Co. Ltd. is not under the Managing Agency of Messrs. Karam Chand Thapar & Bros. Pvt. Ltd., the services of Shri Jagir Singh could not be transferred from Real Jambad to Madhuband Colliery. In the circumstances, his services had to be terminated at Real Jambad and he had to be taken afresh on the rolls of Madhuband Colliery."

Exhibit W. 13 further refers to the management's earlier Office Order dated the 30th July, 1956, Exhibit W, and says that the said letter simply confirms that the workman concerned stands appointed as Welfare Officer Under Training at Madhuband Colliery, and, that the confirmation of his services as a Welfare Officer can come up for consideration only if he obtains a Degree or Diploma in Special Welfare or Social Science from an Institute recognised by Government in terms of Sub-Rule 2(6) of Rule 17 of the Mines Rules, 1955.

This letter Exhibit W. 13 is then referred to in Exhibit W. 12 which is a letter dated 14/15 February 1958, sent by the Agent to the Manager, Madhuband Colliery. By Exhibit W. 12 the Manager is informed that the position has been clarified by the Secretariat department by its letter Exhibit W. 13, and, from that it is clear that the workman concerned has not yet been confirmed.

(d) It may be mentioned that it was admitted by both that previously also on 12/15 July 1958 the concerned workman was transferred to the Central Saunda Colliery, but subsequently this order of transfer was withdrawn on 5/6 August 1958;

(e) On 14th May 1959, as will appear from Exhibit M. 5, the workman concerned made a representation to the Chief Labour Commissioner (Central), New Delhi, for certain claims of money on account of arrears of Leave, Grade, Variable Dearness Allowance, etc. In this letter, Exhibit M. 5, the workman concerned has referred to Rule 25 of the Service Rules of the Company of Messrs. Karam Chand Thapar and Bros. (P) Ltd., Exhibit M. On this strong reliance was placed by Sri Kapur, on behalf of the Management, to show that the concerned workman himself knew that he was governed by the Service Rules of Messrs. Karam Chand Thapar, Exhibit M;

(f) On 15th July 1959, Agent, Messrs Karam Chand Thapar, sent a letter Exhibit M. 6 to the Labour Inspector (Central), Bagmara, in reply to the representation of the workman concerned, Exhibit M. 5, saying that there was no basis for the claim of the workman concerned, and, therefore, he was not entitled to anything;

(g) On 12/14th September 1959, the workman concerned was transferred with immediate effect from The Madhuband Colliery to the Central Saunda Colliery under Office Order, Exhibit M. 16. Exhibit W. 1 dated 15th September 1959 is another Office Order passed by the Manager, Madhuband Colliery, relieving the workman concerned from his duty in The Madhuband Colliery with effect from 15th September 1959 as per the Agent's letter, Exhibit M. 16, and requested the workman to proceed to the Central Saunda Colliery Limited with immediate effect and to report to the manager there;

(h) On 17th September 1959 the workman sent a letter, Exhibit M. 17, to the Manager, Madhuband Colliery, protesting against his transfer on the ground that The Central Saunda Colliery belonged completely to a different Company, and, that his hasty transfer was presumably due to his trade Union activities, and, therefore, his transfer was illegal and vindictive and it should be withdrawn. On the same day, the workman also sent a letter, Exhibit W 2 giving therein the resolution passed by the Union at Madhuband Colliery on 17th September 1959 challenging his transfer, to the General Secretary of the Union;

(i) On 22nd September 1959 Messrs. Karam Chand Thapar as Agents of The Madhuband Colliery sent a letter, Exhibit M. 18, to the workman explaining to him

that as he was appointed on 13th November 1953, under the terms and conditions contained in the Service Rules of Messrs. Karam Chand Thapar, Exhibit M, and posted then at The Real Jambad Colliery, and thereafter, in accordance with Rule 4(b) of the said Service Rules, Ext. M, his services were transferred from the Real Jambad Colliery to the Madhuband Colliery in July 1956, he was being transferred to the Central Saunda Colliery under the same service rules governing his service conditions, because The Central Saunda Colliery, like The Madhuband Colliery, is also looked after, managed and controlled by Messrs. Karam Chand Thapar & Bros. (P) Limited, and, therefore, his transfer was perfectly legal;

(j) On 22nd October 1959 also a similar letter, Exhibit M. 19, making a reference to the earlier letter Exhibit M. 18, was sent to the workman asking him finally to report for duty at the Central Saunda Colliery;

(k) On 9th December, 1959 the workman was served with a registered letter, Exhibit M. 20, informing him that as he had not complied with the order, Exhibit M. 19, asking him to report within one week of its receipt at Central Saunda Colliery, in compliance with its earlier order dated 12/14 September, 1959, Exhibit M. 16, he was being discharged from the Company's Service.

It may be mentioned here that the workman concerned was not served with any separate charge sheet, other than this letter Exhibit M. 20, and, therefore, without any enquiry, without giving him an opportunity to show cause against his alleged offence and the proposed punishment for his alleged offence, he was discharged with effect from 9th December, 1959. These facts were admitted by Shri Kapur. The case of Shri Kapur was that, on the facts of the present case, no domestic enquiry was needed, and, therefore, no further enquiry was held.

(l) The Central Secretary of the Union on 17th September, 1959 sent a telegram to the Conciliation Officer regarding the illegal transfer of the workman concerned, and, thereafter, a letter was sent by the Union on 23rd June, 1961, to the Regional Labour Commissioner (Central), Dhanbad, regarding this matter, as will appear from his failure report dated 13th November, 1961, and, then the matter in dispute was taken up by him, and, in course of the conciliation proceeding, the Union, on behalf of the workman, filed his written statement on 7th October, 1961, Exhibit W. 14, and;

(m) The Conciliation Officer, thereafter, submitted his Failure Report on 13th November, 1961.

12. On the foregoing facts, the principal question, as stated earlier also, which is to be decided first, is whether the Service Rules of Messrs. Karam Chand Thapar, Exhibit M, applied to the workman; whether he was governed by the said Service Rules, Ext. M, either when he was appointed, for the first time, in The Real Jambad Colliery in 1953, or, when he was transferred subsequently to Madhuband Colliery in 1956, or, at the time of his transfer in 1959 from the Madhuband Colliery to The Central Sounda Colliery.

13. The Service Rules, if any, of The Real Jambad Colliery, which were in force in 1953, when the workman was first appointed there, have not been filed. There is no reliable evidence either to show that the Service Rules of Messrs. Karam Chand Thapar, as amended on 15th November, 1957, Exhibit M, were in force in The Real Jambad Colliery in 1953, and, that they applied to and governed the service conditions of the workman concerned. This position was admitted by Sri Kapur, on behalf of the management also, as already mentioned.

Standing Orders for the Madhuband Colliery Exhibit M. 4 were certified for the first time on 26th February, 1960, after the appointment of the workman concerned at the Madhuband Colliery in 1956.

It was admitted by both the parties that Standing Orders or Model Standing Orders like Exhibit W. 17 are not applicable unless they are certified or accepted otherwise. In the Madhuband Colliery there was no Standing Orders before 1960. The list dated the 1st April 1950 of the Chief Labour Commissioner contains in Schedule A a list of 261 collieries to which the Model Standing Orders Exhibit W. 17 were applied on 8th April, 1950 but this list does not contain the name of the Madhuband Colliery. Exhibits M. 1 to M. 3 are letters from the Regional Labour Commissioner (Central), Dhanbad, to Messrs. Karam Chand Thapar, as agents of Madhuband Colliery, regarding certification of draft standing orders applicable to Madhuband Colliery and Exhibit M. 4 dated 26th February, 1960 are the Certified Standing Orders applicable to Madhuband Colliery. Standing Orders take effect after 30 days of their receipt. These standing orders Exhibit W. 17 were received on 29th February, 1960, (Exhibit M. 1) and, therefore,

they came into operation on 29th March, 1960. Therefore, on the date of transfer or on the date of discharge of the workman concerned there was no standing Orders in operation in Madhuband Colliery.

The Standing Orders, for the Coal Mining Industry, relied upon by the workman concerned, Exhibit M. 17, however, were certified on 8th April, 1950.

14. The question, therefore, is which standing orders governed the conditions of service of the workman concerned in other words, whether Exhibit M, as alleged by the management, or Exhibit W. 17 as alleged by the workman concerned.

The workman has filed an appointment letter dated 27th June, 1957, Exhibit W. 18, which is issued on the first appointment to all the employees of The Madhuband Colliery. Exhibit W. 18 states *inter alia* that:

> "If you accept the appointment you will be guided by the Standing Orders of Coal Mines Act".

It was conceded by Shri Kapur, as recorded by the Tribunal, on the petition of the workman concerned, in its Order Sheet—Order No. 12 of 19th February, 1963, that it was admitted by the management that Exhibit W. 18 is the form of appointment letter which is generally issued to daily and piece-rated workmen, but not to monthly paid workers. It may further be mentioned that in Exhibit W. 18 the words 'Company's Standing Orders,' occurring after the sentence "If you accept you will be guided by the" are passed through and in its place the above expression "Standing Orders of Coal Mines Act 1952" was substituted and inserted. The Standing Order of the Madhuband Colliery, Exhibit M. 4, as mentioned, were certified, for the first time, on 26th February, 1960, and, therefore, it is plain that the Standing Orders for the Coal Mining Industry Exhibit W. 17, which were certified on 8th April, 1950, governed the Madhuband Colliery, as alleged by the concerned workman, and as mentioned also in Exhibit W. 18, just mentioned, and the Service Rules of Messrs. Karam Chand Thapar, Exhibit M, did not govern the conditions of service of the employees of The Madhuband Colliery even prior to 1960, when it had not its own standing orders.

15. As mentioned before, there is no reliable evidence to show as to what were the Service Rules in force in The Real Jambad Colliery in 1953, when the workman concerned was first appointed there on 13th November, 1953. and if the Service Rules of Messrs. Karam Chand Thapar, Exhibit M, governed the conditions of service of the workman concerned.

Sri Kapur, however, strongly relied on the appointment letter, Exhibit M. 15, issued to the workman concerned, in which in para 2 it is said that his appointment will be governed by Service Rules as may be in force from time to time. This, in my opinion, is quite vague and not sufficient to prove that the Service Rules, mentioned in Exhibit M. 15, meant the Service Rules, of Messrs. Karam Chand Thapar, Exhibit M. Moreover, the Service Rules of Messrs. Karam Chand Thapar Exhibit M are of 1957, and, therefore, in the absence of any evidence that these Service Rules Exhibit M. were made applicable to the employees of The Real Jambad Colliery company Limited, in 1953 or before 1957, it cannot be held that the said Service Rules Exhibit M. applied to the Real Jambad Colliery Co., Ltd., also in 1953 and that Para 2 of Exhibit M. 15 referred to Exhibit M. and not to Exhibit W. 17 which admittedly was in force since 1950. When there is no evidence that The Real Jambad Colliery had its own Service Rules or Standing Orders, and, when, the Standing Orders of The Real Jambad Colliery in force in 1953 or even after, have not been produced, it must be held that the Standing Orders for the Mining Industry, Exhibit W. 17, which were certified in 1950. governed this Real Jambad Colliery also. The onus was on the management and it has failed to prove that Exhibit M. applied to The Real Jambad Colliery or to the workman concerned.

Sri Kapur also relied on Exhibit M. 5, the letter sent by the workman concerned on 4th May 1959 to the Chief Labour Commissioner (Central), New Delhi, in which a reference is made to Rule 25 of the Service Rules of the Company of Messrs. Karam Chand Thapar and Bros. which provides for privilege leave and sick leave for a certain period in a year. But, in my opinion, the said reference to Rule 25 of Exhibit M. is obviously due to the fact that as the Managing Agents of The Madhuband Colliery were Messrs. Karam Chand Thapar, the workman concerned in support of its leave application referred to Rule 25 of the Service Rules of Messrs. Karam Chand Thapar, Exhibit M, to show that under that rule even the employees of Messrs. Karam Chand Thapar were entitled to

privilege leave for 21 days and sick leave for 18 days per year. From that statement of the concerned workman in Exhibit M. 5 it cannot be held that the workman concerned admitted and agreed to be governed by the Service Rules of Messrs. Karam Chand Thapar, Exhibit M.

16. The workman concerned worked at The Real Jambad Colliery from 13th November, 1963 to 24th July, 1956 and he was employed for the first time at The Madhuband Colliery on 1st August, 1956. It may be mentioned that if it was a fact that the Service Rules of Messrs. Karam Chand Thapar Exhibit M. were in force in 1953 or even before or after in The Real Jambad Colliery, why no Service Rules then in force were produced. Exhibit W. 13, the letter of the management's Administration Department dated 6th February, 1958, in my opinion, makes it clear that The Real Jambad Colliery is not under the Managing Agency of Messrs. Karam Chand Thapar, and, therefore, the transfer of the workman concerned from The Real Jambad Colliery to The Madhuband Colliery was considered as a fresh appointment at The Madhuband Colliery after termination of his service at The Real Jambad Colliery. If The Real Jambad Colliery and The Madhuband Colliery were under the same management and governed by the same Service Rules how could such an order be passed by the Management's Secretariat Administrative Department as far back as 6th February, 1958. Exhibit W. 13, in my opinion, is a settler on the question, and, therefore, it must be held that the Service Rules Exhibit M did not apply and govern the Service conditions of the employees of The Real Jambad Colliery. It appears, however, to me that here we are really concerned with the Madhuband Colliery from where the workman concerned was transferred to the Central Saunda Colliery and therefore, The Real Jambad Colliery is not so material for deciding whether the transfer was legal or illegal. Shri Kapur relied on The Central Saunda Colliery also, because, this Central Saunda Colliery and The Madhuband Colliery were both under the Managing Agency of Messrs. Karam Chand Thapar.

The reason why Shri Kapur referred strongly to The Real Jambad Colliery was due to Para 2 of Exhibit M. 15, the letter of appointment of the workman concerned in The Real Jambad Colliery on 13th November, 1963, in order to show that since his first appointment in 1953 in the Real Jambad Colliery the workman concerned agreed to be governed by these Service Rules, Exhibit M, and, therefore, on his transfer to The Madhuband Colliery also, he was governed by Exhibit M and even at the time of his transfer to The Central Saunda Colliery in 1959 he was governed by the same Service Rules, Exhibit M.

I have, however, already given reasons for being unable to accept this contention of Sri Kapur as correct and held that on the basis of even Exhibit M. 15 or Exhibit M. 5 or both, it cannot be held that the workman concerned agreed to be governed by these Service Rules Exhibit M, either when he was in service in The Real Jambad Colliery or in The Madhuband Colliery.

17. On behalf of the management, Exhibit M. 14 and M. 26 to M. 31 were filed to show *inter* transfers of employees from The Central Saunda Colliery to The Madhuband Colliery and *vice versa*, and further to show that these transferees accepted their transfers and they never protested against their transfers. That may be so. But those transfers are not binding on the workman concerned when admittedly he was not a party to any of them.

18. On behalf of the management a judgment of the Supreme Court, Exhibit M. 32, in Civil Appeal No. 530 of 1959 between Employers in relation to the Kankanee Colliery and Their workmen, decided on 11th March, 1960, by Their Lordships Gajendragadkar and Wanchoo JJ, was filed in order to show that, in that case, it was held that the workman concerned in that appeal Sri Chakravarti was governed by the Service Rules, Exhibit M. In my opinion, that decision is of no assistance to the management in the present case. The facts of that case, as mentioned in Exhibit M. 32, are these:

The appellant before the Supreme Court was the Kankanee Colliery which originally belonged to The Eastern Coal Co. Ltd., but it was subsequently purchased by Messrs. Bhowrah Kankanee Collieries Limited from 1st January, 1955, and Messrs. Karam Chand Thapar were the Managing Agents of this purchasing company. The workmen of the appellant company—Kankanee Colliery—became apprehensive about their future on account of this transfer and were afraid that the terms and conditions of service prevalent in cmopanies under the management of Messrs. Karam Chand Thapar might be applied to them in place of the existing terms and conditions of service with the selling company which were more favourable.

Shri Chakravarty was on the staff of the *i.e*, Eastern Coal Co. Ltd., Colliery as a Personal Officer when the change took place on 1st January, 1955. He continued to work as such till the 31st March 1957. On March 25, 1957, he was informed by the management of the colliery that as he had completed the age of 55 years he was being retired in accordance with the Service Rules, which fixed the age of 55 years for superannuation. It may be mentioned that there was no superannuation age in the Eastern Coal Co. Ltd., Chakravarty was actually retired on March 31, 1957. He however contended that as his original appointment was with the Eastern Coal Co. Limited and as the purchasing company had agreed to continue the employees on the same conditions, he could not be retired simply because he had completed the age of 55 years and was entitled to remain in service as long as he was physically fit to discharge his duties. One of the questions raised was whether Chakravarty was a workman within the meaning of Section 2(s) of the Act on January 1955. The Supreme Court held that he was not such a workman and therefore he could not take advantage of the agreement, referred to before, between the workmen and the management. The next question was whether Chakravarty would be governed by the Service Rules, i.e. Exhibit M. In that connection, Rule 1 of the Service Rules, Exhibit M, came up for consideration by the Supreme Court, and, it was held by His Lordship, Wanchoo J, who pronounced the unanimous opinion of the Court, that:

> "It is clear that the Service Rules apply to the employees of all the companies under the management of Messrs. Karamchand Thapar and Bros., Ltd., except so far as and to the extent it is agreed upon by agreement or letter of appointment in any case or there are any Standing Orders under any Statute for the time being in force and applicable to any office, mill, colliery or works or to an employee or group of employees. The Tribunal seems to have misunderstood this rule, for it says that even under this rule, the Standing Orders would apply to Chakravarty and not these Rules. The Tribunal, however, has omitted to notice that the Standing Orders would exclude the Service Rules only except in so far as and to the extent they are inconsistent. This means that if there is anything in the Standing Order which is inconsistent with the Service Rules, the Standing Orders will prevail; but if the standing orders are silent on any point, the Service Rules will prevail.
>
> In the present case the Standing Orders, even assuming they applied to Chakravarty in 1955, are completely silent on the question of retirement age. Further under the Schedule to the Industrial Employment (Standing Orders) Act, No. 20 of 1946 it is not necessary to provide for superannuation age in the Standing Orders though it may be done under Cl. (11) of the Schedule, which lays down that the Standing orders may "provide for any other matter"; but when the Standing Orders have not prescribed the superannuation age there is no inconsistency between them and the Service Rules and therefore the Service Rules would prevail."

Thereafter, the next question which arose before Their Lordships was whether the Service Rules, Exhibit M, here applied to Chakravarty. In holding, that they applied, Their Lordships observed as follows, at page 4 of Exhibit M. 32:

> "The next question is whether the Service Rules applied to Chakravarty. So far as that is concerned it is obvious that the Service Rules were to apply to all the employees working under Messrs. Karam Chand Thapar & Bros. (P) Ltd. That was why the workmen raised the dispute when the colliery was transferred and insisted that the Service Rules should not apply to them. The inference clearly is under the circumstances that but for the agreement between the workmen and the colliery by which the conditions of service continued to be the same, the Service Rules would have applied to them also. As we have already pointed out, Chakravarty being not a workman on the relevant date could not take advantage of this agreement and therefore so far as Chakravarty was concerned, the Service Rules applied to him on the transfer of the colliery. As there is nothing in the Standing Orders which is inconsistent with the Service Rules relating to superannuation age and as the Service Rules would apply except in so far as and to the extent the Standing Orders applied, Chakravarty would be governed by the rule of superannuation, even though he might be a workman in March, 1957, due to change in law.

In this view of the matter, the colliery was justified in retiring him under the Service Rules after he had attained the age of 55.".

19. From the just mentioned Supreme Court decision, the facts, which, in my opinion, emerge are (i) that the appellant there, Kankanee Colliery which originally belonged to the Eastern Coal Co. Ltd., had its own Standing Orders; (ii) the Service Rules, Exhibit M in the present case, of Messrs. Karam Chand Thapar, the Managing Agents of Messrs. Bhowra Kankanee Collieries Limited, were applicable to the employees of Messrs. Bhowra Kankanee Collieries Ltd., the purchasing company; (iii) there was an agreement between the purchasing company—Messrs. Bhowra Kankanee Collieries Limited, and, the employees of the appellant company, Kankanee Colliery, the purchased company, to continue them in employment on which they were working before on the same conditions in the purchased company, and, (iv), as held by the Supreme Court, but for the agreement between the workmen and the colliery, by which the conditions of service continued to be the same, the Service Rules (i.e. Exhibit M. here) would have applied to the workman, Chakravarty.

The above circumstances are completely absent in the present case. Those conditions do not exist. Here, to repeat, (i) Neither The Real Jambad Colliery nor The Madhuband Colliery had its own standing orders or Service Rules in force at all material times; (ii) there is no reliable evidence that these Service Rules (Exhibit M) were accepted by the workman concerned, or, that they were made applicable to all the employees of these two collieries, or, even to the employees of the Madhuband Colliery, of which admittedly Messrs. Karam Chand Thapar were the Managing Agents; (iii) the Standing Orders, (Exhibit W. 17), were in force since 1950; and were applicable to all the three Collieries concerned; and, (iv) there is no reliable evidence that that those Service Rules, Exhibit M, were in force even before 1957, because they are of 1957, in any of these three Collieries. For these reasons, the present case, in my opinion, cannot be governed by the Supreme Court decision, Exhibit M. 32.

20. Rule 1 of the Service Rules, Exhibit M, lays down that these rules shall apply to all the employees of Messrs. Karam Chand Thapar and Bros., and also to the employees of all the companies under their *management and control*. The question, therefore, is what is meant by the expression 'management and control' referred to in this Rule 1? Shri Kapur placed Strong reliance on these words, 'management and control', in Rule 1 of Exhibit M and contended that as the Madhuband Colliery and The Central Saunda Colliery were both under the Managing Agency of Messrs. Karam Chand Thapar Exhibit M applies to the employees of both the collieries.

In the present case, admittedly The Madhuband Colliery is not owned by Messrs. Karam Chand Thapar. Karam Chand Thapar, as stated before, and, as admitted by the management, are the managing agents of The Central Saunda Colliery and also of The Madhuband Colliery and only Secretary and Treasurer of the Real Jambad Colliery. Shri Gurbachan Singh relied on the definitions and functions of Secretary, Treasurer, Manager and Managing Agents, as given in the Company's Act, 1956 in order to show that Karam Chand Thapar even by virtue of being Managing Agents of The Madhuband Colliery and The Central Saunda Colliery cannot come within the expression "management" used in Standing Order No. 26, Exhibit W. 17, or within the expression "management and Central" in Rule 1 of the alleged Service Rules Exhibit M.

The word 'Managing Agents', has not been defined either in the Standing Orders Exhibit W. 17 or in the alleged Service Rules of Messrs. Karam Chand Thapar Exhibit M. This word 'Managing Agents' has, however, been defined both in The Companies Act 1956, as also in the Mines Act, 1952. The word 'Managing Agent' has been defined in Section 2(25) of The Companies Act, 1956 (No. 1 of 1956 and also in Section 2(1) (ii) of The Mines Act, 1952 (No. XXXV of 1952).

Section 2(ii) of the Mines Act, 1952, simply says that that 'Managing Agent' has the meaning assigned to it in the Companies Act, 1956. Section 2(25) of the Companies Act, 1956 is to the following effect:

> "Managing Agent" means any individual, firm or body corporate entitled, subject to the provisions of this Act, to the management of the whole, or substantially the whole, of the affairs of a company by virtue of an agreement with the company, or by virtue of its memorandum or articles of association, and includes any individual, firm or body corporate occupying the position of a managing agent, by whatever name called;".

The word "Managing Director" has also been defined separately in Section 2(26) of the Companies Act, 1956. This shows that a Managing Agent is not synonymous with a Managing Director and both are different persons possessing different powers specified in the act.

From the above definition of the expression 'managing Agents', in Section 2(25) of the Companies Act, it is plain that the managing agent is entitled to the management of the whole affairs of the Company under the control and direction of the directors concerned. Admittedly, in the instant case, the Board of Directors of the Madhuband Colliery and The Central Saunda Colliery, with which we are concerned, and, of which two Messrs. Karam Chand Thapar are the Managing Agents, are different.

21. The word 'Management' in either Standing Order No. 26, Exhibit W. 17 or in Rule 1 of Service Rules, Exhibit M, in my opinion, does not and 'cannot' mean an owner. A similar case in which Messrs. Karam Chand Thapar, who are here, were involved and in which also, like here, they were the Managing Agents of the *Pootkee Colliery* as also of the Central Saunda Colliery and The Madhuband Colliery which with here we are concerned, one of the workers of Pootkee Colliery was transferred from Pootkee Colliery to this very Central Saunda Colliery and another was transferred from Pootkee Colliery to this very Madhuband colliery. There also, in the case relating to *Pootkee Colliery*, it was contended, on behalf of the management that the word 'management' in Standing Order No. 26 covered Managing Agents and, therefore, Messrs. Karam Chand Thapar, who were managing agents, of all the three Collieries concerned there, came within this rule. It was held by the All India Industrial Tribunal (Colliery Disputes) that:

> "There is no doubt that 'management' can refer only to the company which is a legal entity and not to their managing agents. A single managing agent, ... can take up the management of a large number of companies. But the managing agent gets his power to manage each company from the owner of that company and cannot mix up the affairs of one company with that of others."

This decision was upheld by the Labour Appellate Tribunal on appeal. I respectfully express my cordial assent to this interpretation of the word 'management' in Standing Order No. 26 of Exhibit W. 17 or Rule 1 of Exhibit M. This view gets strong support from the decision of the Supreme Court in 1961—II.L.L.J. 146 dealt with below.

22. The question, whether 'managing Agents' were owners of the Coal mines, or the Manager or Agents, or occupier thereof, was considered by the Supreme Court in *Chief Inspector of Mines V. Lala Karam Chand Thapar*, the admitted managing agents of The Madhuband Colliery and The Central Saunda Colliery, were parties, 1961-II.L.L.J. 146. After examining the definition of 'owner' in Section 2(1) of The Mines Act, 1952, it was held by the Constitution Bench of the Supreme Court that:

(i) "The High Court is right in holding that the managing Agents of the Colliery Company are neither the 'owner' of the Coal mines nor the 'manager' nor 'agent' thereof"

(ii) Whatever possession, the managing agents of a Colliery company exercise in and over a mine is exercised on behalf of the colliery company and not on their own behalf and as such managing agents are not occupier of the mine within the meaning of Section 2(1);" and,

(iii) "The managing agent company, not being either agent or manager, or owner of the mine, no question of contravention by that company or any of its directors of the Coal Mines Regulations arise."

On the above authority it is manifest that Messrs. Karam Chand Thapar, as managing agents of The Madhuband Colliery and The Central Saunda Colliery could not be considered to be owners thereof so as to make their Service Rules, Exhibit M, *ipso facto* applicable to the employees of the collieries under their managing agency without the consent of the employees concerned.

23. The question that 'managing agents' are not 'owners' and that the word 'management' means the 'owner' of the company and not its 'Manager', or 'Agent', or 'Managing Agent', did not arise for decision by the Supreme Court in the case of *Kankanee Colliery*, Exhibit M 32, relied upon by Shri Kapur, and, therefore, the fact that, on the facts of that case, the Service Rules, Exhibit M, of Messrs.

Karam Chand Thapar were held applicable to the workman concerned in that case will not make them applicable to the concerned workman here also when he has taken the stand that these Service Rules did not apply and never applied to him. For this reason, in my opinion, reliance on Exhibit M. 32 is of no assistance, but the general principles laid down therein will certainly apply, if the facts are similar, which are not here.

24. For the reasons expressed above, in my opinion, Messrs. Karam Chand Thapar cannot be deemed to come within the meaning of 'Management', used in S.O. No. 26 of Exhibit W. 17, or, even within the expression 'management and control' in Rule 1 of their Service Rules, Exhibit M, which expressions have not been used in a narrow sense, but in a broad sense, meaning 'owners' or their representatives. The word, 'Control' used along with 'management' in Rules of the Service Rules, Ext. M, therefore, would mean Control of an owner as such. On this ground, therefore, Messrs. Karam Chand Thapar being admittedly not owners but only Managing Agents of the two Collieries concerned, i.e., The Madhuband Colliery and the Central Sounda Colliery, had no right to transfer the workman concerned from The Madhuband Colliery to The Central Sounda Colliery, admittedly not owned by the same Proprietors, and, as such, on this ground alone the transfer of the workman concerned was not justified and was illegal.

25. It is well settled by the decision of the Supreme Court in *A.I.R. 1960 S.C.* 650 that "Apart from any statutory provision, the rights of an employer and an employee are governed by the terms of contracts between them or by the terms necessarily implied from them." It is also well established by the decision of the Supreme Court in *Kundan Sugar Mills vs. Ziya Uddin*, 1960-I,L.L.J. 266, that if the order of transfer itself is illegal and unjustified, the dismissal of the workman concerned for disobeying such an order of transfer must be held unjustified. In the light of these principles, let us see if the order of transfer in the instant case, was legal and justified.

26. As held before, the workman here never accepted these Service Rules. Exhibit M, of Messrs. Karam Chand Thapar. There is no evidence that these Service Rules, Ext. M, were accepted or that conditions of service of the employees, including of the workman concerned, of The Real Jambad Colliery, or of the Madhuband Colliery, wherefrom the concerned workman was transferred to The Central Saunda Colliery, were governed by these Service Rules, Ext. M, simply because Messrs. Karam Chand Thapar were the managing agents of both.

In the first letter of appointment of the workman in the The Real Jambad Colliery Exhibit M.15, para 2 of which was relied upon by the management, there is no reference whatsoever to the Service Rules, Exhibit M. Then again, in the letter, Exhibit W.1, transferring the workman concerned from The Madhuband Colliery to The Central Saunda Colliery, or, even in the letter of confirmation of the workman concerned, Exhibit W, in his Service at Madhuband Colliery, there is absolutely no mention of the Service Rules, Exhibit M. It is neither the case of the management that there was a special agreement between the workman concerned and Messrs. Karam Chand Thapar, the managing agents of The Madhuband Colliery, to the effect that the workman concerned would be governed by their Service Rules Exhibit M and that these Service Rules Ext. M will govern the conditions of his service at Madhuband Colliery. Nor there is any evidence or the case of the management that there was an agreement, express or implied, between the Madhuband Colliery and all its workmen that these Service Rules Exhibit M. would govern them also. For these reasons, I hold that these Service Rules Exhibit M did not govern the conditions of service of the concerned workman and they did not apply to him.

27. It is manifest, therefore, that the transfer of the workman concerned was contrary to Standing Order No. 26, Exhibit W.17, which applied to the Madhuband Colliery as proved by Exhibit W.18, referred to before, and as the owners admittedly of the Madhuband Colliery and The Central Saunda Colliery were different persons and as these two Collieries were entirely different collieries owned by different proprietors, and situated at a distance of 150 miles apart, as mentioned in Exhibit W.14, the workman concerned could not be transferred from the Madhuband Colliery to The Central Saunda Colliery, and as such, the transfer of the workman concerned was illegal and unjustified, and, consequently, his discharge from service was also unjustified. It was conceded by Sri Kapur that if it be held that the Service Rules Exhibit M did not apply to the workman concerned and that the Standing Orders, Exhibit W.17, applied in that case, the transfer and consequent discharge due to the disobedience of the order of transfer of the workman concerned would be illegal and without jurisdiction.

28. It is also clear that the workman concerned was transferred due to his trade union activities by way of victimisation. On 14th May 1959, the workman concerned, as will appear from Exhibit M.5, made a representation to the Chief Labour Commissioner (Central), New Delhi, claiming certain demands of money on account of arrears of pay and the like which was denied by the management. To this letter Exhibit M.5 the management sent a reply on 15th July 1959 Exhibit M.6 challenging the allegations of the workman concerned and, immediately thereafter, on 12/14 September 1959 he was transferred to Central Saunda Colliery under Exhibit M.15. There is, therefore, no doubt that he was transferred because of his trade union activities and because of demanding money from the management, and representing his grievances to the higher authorities concerned. The case of the concerned workman, therefore, that his transfer was *malafide* and by way of victimisation is correct.

29. It may be mentioned that Sri Kapur did not press his objection taken in his written statement that the present dispute was not an industrial dispute but an individual dispute, and, further, that the Government had no right to refer the present dispute when once it had refused to refer it. It is, therefore, not necessary to express any opinion on these two questions.

30. The argument of Shri Gurbachan Singh that as the concerned workman was straightaway discharged for disobeying the order of transfer without any charge sheet, without being given any opportunity to show cause against his discharge, without hearing him at all and without any enquiry, his discharge was illegal and unjustified and in violation of the principles of natural justice, in my opinion, is correct and on this ground also his discharge from service must be quashed. It may be noted that this part of the case of the workman was not seriously challenged by the management. This allegation was not denied before me.

31. The other argument of Shri Gurbachan Singh that, even assuming, but not admitting, that these Service Rules Exhibit M applied to the workman concerned, his discharge, being contrary to Para 12 of the Service Rules, Ext. M was illegal has also substance. Paragraph 12 of the Service Rules Exhibit M deals with termination of service if he is found guilty of the misconduct specified in sub-paras (1) to (vii) of Para 12. There is a note appended to it which says "N.B. In all such cases the Managing Director shall be sole judge and his decision shall be final and binding on the employee." The letter of discharge, Exhibit M20, does not show that the Managing Director either applied his mind to the discharge of the workman concerned or took a decision himself or judged his case or discharged him. Somebody appears to have signed this letter for Messrs. Karam Chand Thapar. On this ground also, his discharge being contrary to para 12 of the Service Rules, Exhibit M, if they applied, was illegal. I do not, however, express my concluded opinion on the above question as it is not necessary to do so.

32. For the reasons given above, I would, therefore, answer the two questions, posed by me, in para 6, in the negative and, consequently, answer the reference in favour of the workman concerned by holding (i) that the transfer of Sri Jagir Singh Underground In Charge of Madhuband Colliery from Madhuband Colliery to Central Saunda Colliery was *malafide*, illegal and unjustified, and, (ii) that his discharge from service for disobeying the order of transfer was also illegal and unjustified, and, therefore, the transfer and the dismissal of the workman concerned, Sri Jagir Singh, are both set aside and he is posted back at the Madhuband Colliery and reinstated with full back wages and other emoluments to which he would have been entitled, with effect from 9th December 1959, the date of his discharge. He would be deemed to be in continuous service at the Madhuband Colliery since then.

33. This is my award which I make and submit to the Central Government under Section 15 of the Act.

Camp: Patna,

The 9th March, 1963.

(Sd.)

RAJ KISHORE PRASAD,

[No. 2/228/61-LRII.]

S.O. 1562.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Dhanbad, in the industrial dispute between the employers in relation to the Jamadoba Colliery of Messrs. Tata Iron and Steel Company Limited, Jamadoba, Post Office Jealgora, Dhanbad, and their workmen.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, DHANBAD

REFERENCE No. 28 OF 1962.

PARTIES:

Employers in relation to the Jamadoba Colliery of Messrs. Tata Iron and Steel Co. Ltd., Jamadoba, P.O. Jealgora

AND

Their workmen.

PRESENT:

APPEARANCES: Shri Raj Kishore Prasad, M.A., B.L.,

Presiding Officer.

For the employers—Shri G. Prasad, Chief Personnel Officer, with Shri S. N. Singh, Welfare Officer.

For the workmen—Shri P. Chanda, President, Tata Collieries Workers' Union.

STATE: Bihar. INDUSTRY: Coal.

Dhanbad, dated the 30th March, 1963

AWARD

Ministry of Labour & Employment, Government of India, by its Order No. 2/87/62-LR.II, dated the 7th September 1962, referred under Section 10(1)(d) of the Industrial Disputes Act, 1947, the following industrial dispute to this Tribunal for adjudication:—

"Whether the supersession of the claim for promotion in the case of Sarvashri Sasanka Chakravarty and Bhutnath Ghosal, electric fitters helpers of 6 & 7 Pits of Jamadoba Colliery of Messrs. Tata Iron and Steel Co. Ltd. was justified and proper? If not to what relief are they entitled?"

2. On behalf of the workmen concerned, the Tata Collieries Workers' Union filed their written statement on 15th October 1962, and, the management also filed its written statement on 16th October 1962.

3. The case of the Union in the written statement is that Shri Bhutnath Ghosal, was working as Electric Fitter Helper since 26th October 1949 and while working as such he passed Workmanship examination in 1963; that Shri Sasanka Chakraborty, the other concerned workman, was also working as Electric Fitter Helper since 9th May 1948 and he also passed the Workmanship examination in 1955; that both these two concerned workmen having obtained these certificates became entitled to promotion for the post of Electric Fitters, and, both of them were assured by the management that they will be promoted to the posts of Electric Fitters as and when vacancies would arise; that these two concerned workmen worked as Electric Fitters from time to time on innumerable occasions under the management, and, therefore, they were entitled to be appointed to the post of electrical fitters on permanent basis; that two permanent vacancies of Electrical Fitters occurred in November 1958, one at Jamadoba and the other at 6 & 7 Pits Colliery, but the management, instead of promoting these two concerned workmen to these two permanent posts, filled the said two vacancies by appointing two persons from outside; that on 19th January 1959 these workmen concerned made a joint application to Sri R. H. Modi, the then Chief Deputy Agent, complaining against their supersession; that Sri R. H. Modi, sent a reply to their joint representation on 20th February 1962, regretting what had happened and categorically declared the procedure that was to be followed for promotion to the post of Electrical Fitters at the Collieries and said that all future

vacancies of Fitters at Tatas will be filled from the list of the candidates in order of seniority prepared after interviewing them by the Heads of Departments; that Shri Ghosal was asked along with others to appear before a test for promotion to the post of Electrical Fitter on 17th September 1959 by the management of 6 & 7 Pits and he appeared at the said test and passed it successfully, and, therefore, the Chief Mining Engineer instructed the Manager of the Colliery that Shri Ghosal should be promoted to the post of Electrical Fitter with immediate effect as he has passed the test successfully; that Shri Chakraborty, the other concerned workman, was also asked to appear at a similar test on 5th October 1960 and he also passed it successfully, and, the Chief Mining Engineer instructed the manager in his case also that Sri Chakravarty should be promoted to the post of Electric Fitter with immediate effect; that on 1st October 1961 the management arbitrarily appointed six persons to the post of Electric Fitters in supersession of the claims of these two workmen concerned in the dispute, although the persons appointed as Electrical Fitters at 6 & 7 Pits were much junior to these two concerned workmen, and, unsuitable for the post; that Shri Ghosal on 30th September 1961 wrote to the Manager of 6 & 7 Pits, with a copy to the Chief Mining Engineer, complaining against the disregard of his claim, and, thereafter Shri Chakravarti also on 1st October 1961 made a similar objection but the management refused to do justice to either; that, therefore, on these facts, it was clear that the action of the management in superseding the claim of these two concerned workmen was *malafide* with a view to victimise them for their trade union activities, and, as such, these two workmen concerned should be promoted to the post of Electrical Fitters and they should be treated as such from 1st October 1961 and paid the wages of Electrical Fitters with effect from the same day.

4. The case of the management, in its written statement, is that these two concerned workmen were working as Fitter Helpers at 6 and 7 Pits of Jamadoba Colliery at the relevant time; that it was the practice of the management to hold tests of the Fitter Helpers intermittently and those who came out successful were given acting/permanent chances to fill in the vacancies, if any, occurring within the sanctioned strength at that particular Colliery to which the Fitter Helper belonged; that at the relevant time no vacancy occurred in the sanctioned strength of the Electrical Fitters of 6 and 7 Pits, Jamadoba Colliery; but some posts of Fitters were sanctioned, beyond the existing sanctioned strength, in addition to the sanctioned strength, and were required for maintenance job; that, since the above jobs required special aptitude for maintenance, the management called for an interview of Fitter Helpers, including those who had passed previously Fitters' test, and, all the eligible candidates were contacted and called, including these two concerned workmen, for interview on 23rd August 1961; that these two concerned workmen, although called for interview on 23rd August 1961, did not turn up and, as such, their suitability for the maintenance jobs could not be decided; that promotion of a workman is not automatic, much less in a job which required special aptitude; that, therefore, as these two concerned workmen, failed to attend the interview on 23rd August 1961, there was no question of any supersession of their claim for promotion, and, as such the action of the management was quite *bonafide* and justified.

5. At the hearing of the reference, the main case of the concerned workmen was that they were deliberately left out from the interview in order to victimise and harass them due to their trade union activities; that they were not called for the interview on 23rd August 1961 nor were they informed at all of the said interview, as now falsely alleged, and, therefore, the appointments made of Electric Fitters on 1st October 1961, in supersession of the claim of these two concerned workmen, was *malafide*, unjustified and an unfair labour practice.

The reply of the management to this case was that these two concerned workmen, as also others, were all informed of the interview to be held on 23rd August 1961, but they deliberately did not appear at the said interview, and, therefore, appointments of Fitters were made on merit from amongst those candidates who turned up for the interview and, accordingly, the action of the management in making the appointments of Fitters on 1st October 1961 did not amount to supersession of these concerned workmen, and, as such the action of the management was perfectly *bonafide* and justified.

6. In support of their case both the parties adduced oral and documentary evidence. On behalf of the workmen concerned the two concerned workmen, namely, Shri Bhutnath Ghosal WW 1 and Shri S. Chakravarti WW 2 were examined and some documents were also filed on their behalf which, with mutual/consent were marked as *Exhibits* W. to W 31

The management also examined Sri N. Ahmed, Assistant Chief Engineer, Tata Collieries, M.W. 1, and Sri A. B. Banerjee, Colliery Engineer, who was posted at 6 and 7 Pits at the relevant time, M.W. 2, and, also filed documents, which, with mutual consent, were marked at *Exhibits M. to M. 20.*

7. Shri G. Prasad, Chief Personnel Officer, with Shri S. N. Singh, appeared for the management and Shri P. Chanda appeared for the Union, representing the two concerned workmen. Sri Chanda representing the workmen put in several documents in order to prove the seniority of these concerned workmen, their suitability and efficiency for promotion; their length of service and their experience as Electrical Fitters, to which posts they were appointed by the management from time to time. But to me it appears, as observed by me in course of argument to Sri Chanda, that the first question for determination, in the instant case, is, whether these two concerned workmen were informed and called to come for the interview on 23rd August 1961 when candidates were interviewed and thereafter selected and appointed on 1st October 1961. If the answer to this question, posed by me, be in the negative, then in deciding whether the management deliberately, out of some ulterior motive, as alleged by the workmen, kept those workmen out of the interview, the question of their superiority and merit *vis-a-vis* the candidates selected and appointed from 1st October 1961 in 6 and 7 Pits will arise. I shall, therefore, proceed to consider this aspect first.

8. Admittedly, even according to the management no written order or notice or written information was given by the management or its officers to the intending candidates to appear at the interview on 23rd August 1961 for the six vacancies of Electric Fitters. The first witness, M.W. 1, Nuruddin Ahmed, Assistant Chief Engineer, Tata Collieries, who was one of the persons forming the Selection Committee, and, who interviewed the candidates on 23rd June 1961, says:

> "I informed the Colliery Engineer on 21st August 1961 to inform the intending candidates for the maintenance fitter's post on 23rd August 1961. I went on 22nd August 1961 personally to 6 and 7 Pits Colliery and confirmed personally with the Colliery Engineer that every Fitter Helper in the Colliery has been informed about the test. I was told that he had informed everybody. These two candidates did not come for the test. The Colliery Engineer informed the intending candidates orally and not in writing about the test."

The Colliery Engineer, Sri A. B. Banerjee, M.W. 2, stated, in his examination-in-chief, as follows:

> "I was required to inform all the candidates at 6 and 7 Pits to take the above test. On 21st when allocating the duties in the morning when all the fitter-helpers come to meet, I informed them regarding their above test. I think they were all there and this includes B. N. Ghosal and S. S. Chakravarti. I told all Electric Fitter Helpers including the two workmen concerned that a Test will be held at C.M.E.'s office and they can appear for the same."

This witness, M.W. 2, in the opening statement in his cross examination, stated:

> "I do not remember whether I informed on 23rd August 1961 but I informed on 21st morning. Normally Electric Fitters and Helpers go down at 8 A.M. in the Pit. The fitters and fitter helpers work in different shifts and not in the same shift. All the fitters and fitter helpers irrespective of their shifts come in the morning at 8 A.M. to give their reports about their work in the night. It is not recorded in attendance register or any other register that fitters and fitter helpers come every morning at 8 A.M. to the Colliery Engineer for reporting their work."
>
> "I never prepared any list of names of fitter helpers either passed or failed previously to inform them to appear in the test. But I verbally informed them. All those persons who were present were informed by me on that day."

According to the evidence of M.W.1 and M.W. 2, therefore, all were orally informed on 21st August 1961 in the morning.

In Exhibit M. 20, which is a letter written by C.M.E. to the Conciliation Officer (Central), Dhanbad, on 24th/26th July 1962, in para 5 it is stated that "All the candidates who appeared at the said interview were informed on phone to appear

on 23rd August 1961. Sri Sasanka Chakravarty and Sri Bhutnath Ghosal were also informed on phone. But they did not turn up".

This letter Exhibit M. 20, therefore, completely makes out a new case, which is not the case of the management before the Tribunal nor is it so stated by any of its two witnesses M.W. 1 and M.W. 2. None of the persons successful or unsuccessful at the interview on 23rd August 1961 have been called to corborate the story given by the management either in Exhibit M. 20, or in its oral evidence here. None of the appointed persons, although they are in the service of the management, have been called as witnesses to support the present case of the management that all were informed orally. In these circumstances, in view of Exhibit M. 20, can it be said that the story of the management that all the candidates, including these two concerned workmen, were informed by the Colliery Engineer M.W. 2 orally is worth acceptance? I have no hesitation on the basis of Exhibit M. 20 to reject this got up story of the management.

9. In order to show that the case put forward by the management is not worthy of acceptance, the Union relied on Exhibit W. 1, dated 11th June 1959 addressed to both the concerned workmen and two others' before the interview on 23rd August 1961, and, on Exhibit W. 22, dated 6th December 1961 to Ghosal and Exhibit W. 31, dated 6th December 1961 to Chakravarty, the two workmen concerned, after the interview on 23rd August 1961, in order to show that these two concerned workmen as also others were sent letters for interview to appear at such tests.

Exhibit W. 1 is dated 11th June 1959 and it was sent by the Manager of 6 and 7 Pits to four candidates, of whom two were these two concerned workmen, informing them that a test for the post of Electrical Fitter will be held in his office on 17th June 1959 at 4 P.M., and, if they wished to appear they can appear at the appointed time and place. This letter of interview was sent in 1959, two years before the interview which took place, in the present case, on 23rd August 1961.

Exhibit W. 22 is a letter written by Deputy Chief Mining Engineer to Ghosal advising him to appear for an interview before them on 13th December 1961 at 8-30 A.M. in connection with his employment. This letter Exhibit W. 22 was sent to Ghosal through the Manager of 6 and 7 Pits. *Exhibit W. 31* is a letter sent to Chakraborthy by Chief Mining Engineer through the Manager 6 and 7 Pits advising him to appear for interview on 13th December 1961 at 8-30 A.M. in connection with his employment. These exhibits W. 1, W. 22 and W. 31 do strongly support the case of the concerned workmen that before as well as after the alleged interview date on 23rd August 1961, with which alone we are concerned, these concerned workmen and others were informed of the interview date by letters. There can be no doubt of this fact. It is, therefore, really surprising, as rightly contended by the Union, why no such notice in writing for the interview on 23rd August 1961 was given to these concerned workmen at all.

10. Both the parties relied on Exhibit W, which is a letter sent to Ghosal and Chakraborty and some others by the Deputy Agent, Shri R. H. Mody, on 20th February 1959 in reply to the application, dated 19th January 1959, of Ghosal and two others, who were mentioned therein, complaining against supersession of their claim for promotion as Fitters, and against the appointment of an outsider as Fitter at 6 and 7 Pits. The Deputy Agent in Exhibit W indicated the procedure laid down by him for promotion to the post of Fitters. Shri Prasad, on behalf of the management, admitted this procedure for promotion but said that this procedure for promotion was meant at the Colliery, and not for other Collieries. As, however, we are concerned with these two workmen, who are working from before in 6 and 7 Pits, naturally Exhibit W would apply to them. The material portion of Exhibit W is to the following effect:—

> "We would inform you, however, that the procedure of promotion to the posts of Fitters at our Collieries has now been changed. The Heads of Departments will hereafter interview the Fitter Helpers, Colliery Department-wise to ascertain their suitability for promotion as Fitters. A proper list of Fitter Helpers found suitable for promotion would be prepared in the order of seniority and put up on the Notice Boards. All future vacancies of fitters at the Collieries will be filled from this list according to seniority."

This is the admitted procedure for promotion. There is no doubt about this procedure. But, in the instant case, this was not followed as far as these two workmen are concerned. On the evidence on the record, I have no hesitation in holding that these concerned workmen were kept in the dark and were not

informed at all orally or on phone and asked to appear at the interview on 23rd August 1961.

11. The above conclusion of mine, that these concerned workmen were never informed about the date of the interview nor were they even orally or otherwise asked to appear for the interview on 23rd August 1961, is further supported by other documents on the record. The interview for appointment of the six Electric Fitters, who were selected and appointed with effect from 1st October 1961, was held, as mentioned before, on 23rd August 1961. On 30th September 1961 Ghosal made an application, Exhibit W. 5, to the Manager of 6 and 7 Pits Colliery, saying that he could understand from a very reliable source that two Electric Fitters will very soon be appointed under his control, and, that the selection of the Fitters has already been made and that the new Fitters will join their duties within a few days. In Exhibit W. 5 he further stated that he has been working as a Fitter Helper since long, that is, from 26th October 1949 and has also passed the Workmanship Examination in 1953 and had been selected in 1959 for promotion to the post of Fitter whenever vacancy arises and the Chief Mining Engineer has instructed that his case may be considered whenever there is a vacancy, (Exhibit W. 2), and, therefore, his case may be given priority for promotion to the post of Electrical Fitter. To this letter, Exhibit W. 5, the Manager of the 6 and 7 Pits Colliery on 9th October 1961 sent a reply to Ghosal, Exhibit W. 18, with reference to his application, dated 30th September 1961, Exhibit W. 5, for the post of Electrical Fitter that whenever there will be a vacancy due to a fitter remaining absent or on leave he will be given a chance to act in his place, and, as there has been no permanent vacancy of a fitter, the management could not give him the post; but, as regards his complaint that fitter was being taken from other Collieries, he should see the higher authorities.

It is important to note that in this letter Exhibit W. 8 written on 9th October 1961, after the selection had been made at the interview on 23rd August 1961, and the new appointments had been made with effect from 1st October 1961, there is no mention by the management of the fact that the applicant Ghosal, although asked to appear at the interview on 23rd August 1961 did not appear, and, therefore, new appointments had been made on 23rd August 1961 with effect from 1st October 1961. It is a very important circumstance against the management to show that the present case of the management that these two workmen concerned were orally informed by the Colliery Manager, M.W. 2, to appear at the interview on 23rd August 1961 is not a true story, but has been set up to cover up its deliberate acts of omission.

Then again, on 25th October 1961 Ghosal sent a reply Exhibit W. 20 to the just mentioned letter, Exhibit W. 18, and in his reply, Exhibit W. 20 Ghosal said that he was pained to say that his justified claim had been ignored, and, the main point mentioned in his application, dated 30th September 1961, Exhibit W. 5 had been side-tracked, and that there has been permanent vacancy of Fitter under him and the same had been filled up by other persons, who were not entitled and that this was done in spite of his prior objection, and, therefore he may kindly reconsider his case and given him the chance of permanent post of Fitter. No reply was sent to this letter Exhibit W. 20, by the Manager of 6 and 7 Pits of the Colliery or the management to Ghosal.

On 9th November, 1961 the Manager of 6 and 7 Pits of the Colliery sent a letter to Ghosal, Exhibit W. 19, saying that his application dated 30th September, 1961. Exhibit W. 5, has been received and he was looking into his case and will reply to him in due course.

On 18th November, 1961, Chakraborty also sent a letter to the Chief Mining Engineer, Exhibit W. 30, saying that it was strange that his claim for permanent post of Electric Fitter had been rejected on the ground of his non-appearance for an interview on 23rd August, 1961 in the absence of any notice to him to appear at the said interview, in as much as, he was not called for an interview on 23rd August, 1961, nor any information was given to him in this regard He, further, mentioned that he did not understand why he should be required to appear for fresh interview when he had already been declared by the Chief Mining Engineer after proper test to be fit to get permanent post of Fitter, whenever there is any vacancy *vide* his letter of 10/11 October, 1960, Exhibit W3. No reply was received by Chakraborty to this letter Exhibit W. 30.

On 22nd December, 1961, Ghosal, thereafter, sent a representation to the Chief Mining Engineer, Exhibit W. 21, saying that his just claim has been ignored by appointing junior persons who had been posted in his Colliery and in other Collieries in permanent post of Electric Fitter in suppersession of his claim, and, that

he had pointed out this point to him and also to the Manager by his letter of 30th September, 1961 Exhibit W. 5. He further said with regard to his application dated 3rd November, 1961 that he had been asked by letter of 6th December, 1961, which was received by him on 16th December, 1961, to appear at an interview after the said interview was over and this fact was duly reported by him to the Manager and the Colliery Engineer, but he did not understand the reason for asking him to appear for such interview, which was in disregard of his letter of 5/13 August, 1959, Exhibit W. 2, by which he was declared fit to get permanent post of Fitter, and, therefore, he requested that he may be promoted to a permanent post of Electric Fitter. No reply was received even to this letter.

It will, therefore, appear that the management or the Manager, on behalf of the management, or the Colliery Engineer none sent any reply to the representation of these two concerned workmen made in Exhibits W. 20, W.21, and W. 30, repudiating the assertion of Chakravarti in Exhibit W. 30 that he had received no notice nor he has been informed of any interview to be held on 23rd August, 1961, nor, Ghosal was told, in reply to his letters, Exhibit W. 20 and W. 21, that he was not appointed, because, although informed orally by the Colliery Manager, M.W. 2, as now alleged by the management, he did not appear at the interview which was held on 23rd August, 1961. These circumstances also, in my opinion, very much weaken the case of the management as now set up that these two workmen concerned were orally informed on 21st August, 1961, by the Colliery Manager, M.W. 2, to appear at the intended interview on 23rd August, 1961. In the ordinary course, it was expected, as it is most natural, if it was a fact, that these two workmen concerned had been informed by the Colliery Manager, M.W. 2, as alleged, to attend the interview on 23rd August, 1961, that the management, in reply to Exhibits W. 30, W. 20 and W. 21, would have denied the charge and asserted that these two concerned workmen had been informed of the interview, but they themselves deliberately for their own reasons did not appear at the interview on 23rd August, 1961.

12. Shri Prasad, on behalf of the management, placed special emphasis on Exhibit W. 21, the letter written by Ghosal, and Exhibit W. 30, the letter written by Chakraborty, in which they said that they did not understand why they were required to appear for fresh interview when they had already been declared by Chief Mining Engineer after proper test to be fit for getting permanent posts of Fitter in accordance with the letter of Chief Mining Engineer to Ghosal, Exhibit W. 2, and, to Chakravarti Exhibit W. 3, in order to show that these two letters Exhibits W. 30 and W. 21 indicate the mind of these two concerned workmen and show that actually they had been informed of the interview but because of their this stand they themselves did not appear for the interview. In my opinion, such an inference cannot be drawn from Exhibits W. 21 and W. 30, in the absence of reliable and positive evidence to prove that these two workmen concerned were really informed of the interview to be held on 23rd August, 1961, but in spite of being informed they deliberately did not appear. If they had been informed and they did not appear at the interview, then of course reliance could be placed on Exhibits W. 21 and W. 30 to supply the reason why these two concerned workmen, in spite of being informed of the interview and in spite of being asked to appear at the interview, did not appear and deliberately absented themselves from the interview, and, therefore, the question of their supersession did not arise. In my opinion, therefore, there is no substance in this contention of Shri Prasad.

13. Shri Prasad also relied on Exhibit M. 4, which is a letter written on 3rd November, 1961, by the Chief Mining Engineer to Chakraborti saying, in reply to his application dated 11th October, 1961, for appointment as Electric Fitter in the said Colliery, that Fitter Helpers, who had either passed or failed in previous tests were called for interview fixed for selection of Electric Fitters in permanent places for maintenance work, but he did not appear at the said interview, and, therefore, his case could not be considered, and therefore, it was urged that it is not true that the case now put forward was a new case inasmuch as the management did not put up the present case as far back as 3rd November, 1961. I may, however, mention that in his reply Exhibit W. 30 dated 18th November, 1961, to this letter of the Chief Mining Engineer, Exhibit M. 4, sent on 3rd November, 1961, Chakravarti denied the fact that he was informed of the interview, and, that he did not appear in spite of being asked to appear for the said interview. In this letter of Chakraborty sent on 18th November, 1961, Exhibit W. 30, no reply was sent on behalf of the management at all. As far as Ghosal is concerned, as I have said before, no reply was sent also to his letters sent on 25th October, 1961, Exhibit W. 20, and Exhibit W. 21 dated 22nd November, 1961. For these reasons, there is great force in the contention put forward on behalf of the concerned workmen that the present case set up by the management was a new case set up for the first time when this dispute started before the Conciliation Officer, as mentioned

in the letter dated 17th July, 1962, written by Deputy Chief Mining Engineer to the Conciliation Officer.

14. There is still another circumstance to support the above conclusion of mine. Exhibit M. 1(a) is "Mark list of Candidates called for interview for the post of Electrical Fitter at 9-30 A.M. on 23rd August, 1961," as is the heading of Exhibit M. 1(a) appearing at the top of this Exhibit M. 1(a). This Exhibit M. 1(a) is very important, because, *ex-facie* it shows that a list of the candidates who were called for interview, was sent by the Colliery Manager or the authority concerned to the Selection Committee and in that list the names of all the twenty two candidates, who were called for the interview, were mentioned. This fact, however, was denied on behalf of the management which said that no such list was sent for at all. If that was so, then what is the reason that this list Exhibit M. 1(a) also includes the names, such as Nos. 3, 5, 6, and 8, of candidates who did not appear for the interview at all. If it was a list of candidates who actually came for the interview then it was expected that this list would have contained the names of only those candidates who actually appeared for the interview. The fact that Exhibit M. 1(a) contains the names of candidates who actually appeared for the interview and also of some others who were absent and who did not appear for the interview, in my opinion, supports the contention of the workmen concerned that these workmen were not called for the interview, and, therefore, their names were not mentioned in Exhibit M. 1(a), otherwise, there was no reason why their names should also not have been mentioned in the said list. If these two concerned workmen had also been informed and called for the interview their names would have been there and as they were absent no mark would have been shown as allotted to them as in the case of Serial Nos. 3, 5, 6 and 8. I, therefore, cannot accept the contention of the management that no list was sent by the Colliery Manager of the candidates called for interview, when this contention is belied by the list Exhibit M. 1(a) itself.

15. Taking into consideration all these facts and circumstances and the materials on the record, my concluded opinion is that these two workmen were not informed either orally or on the phone or otherwise to appear for the interview on 23rd August, 1961, and, therefore, due to the omission of the management to inform these workmen they did not appear at the said interview and that it is not correct that these two workmen, in spite of being informed of the interview, did not themselves deliberately appear at the said interview.

16. The next question is what was the motive behind the action of the management in not informing these workmen when it informed as many as twenty two candidates who are shown in the list Exhibit M. 1(a)? According to the concerned workmen, the management was very much annoyed with them because of their trade union activities, and, therefore, they were deliberately kept ignorant of the interview which took place on 23rd August 1961, and, their claims were superseded, and, less experienced and all juniors to these concerned workmen were appointed as Electrical Fitters on 1st October 1961 in 6 and 7 Pits where these two concerned workmen were working from before and where they had acted as Fitters on several occasions. On this question we have got the evidence of one of the two concerned workmen Chakrabarty. W.W. 2, who says that he was victimised and harrassed by the officers of the management, because he was a member of the Executive Committee of the Union, of Sri P. Chanda, namely, Tata Collieries Workers Union of which Sri Chanda was admittedly the President. W.W. 2, further stated that his proof that he belonged to the Executive Committee of the Union of Sri Chanda was that Sri Chanda was in court, meaning appearing for him. In their written statements these two concerned workmen asserted in paragraphs 22 and 23 that the management had made new appointments from 1st October 1961 in supersession of their claim with a *malafide* intention to victimise them and deprive them of their lawful claim and to favour those who were liked by the management. The management in its written statement filed on 16th October 1962, does not specifically deny the allegations, just mentioned, made by the concerned workmen and it only says in para 10 of its written statement that there was no question of supersession of the alleged promotion of these two concerned workmen. The two witnesses examined, on behalf of the management, M.W. 1 and M.W. 2 did not deny the allegations made by W.W. 2 that he was a member of the Executive Committee of the Union, which was made in the cross-examination of W.W. 2. The fact that these two concerned workmen were members of the Union, namely, Tata Collieries Workers' Union, is also proved by the fact that their cases were taken up by this Union, which represented these concerned workmen from the very beginning, from the stage when the matter was taken up by the Conciliation Officer.

It is true that the fact that these two concerned, workmen were members of the Tata Collieries Workers' Union was not admitted by the management, as according to it, the Union working in this Colliery was Colliery Mazdoor Sangh, affiliated to the I.N.T.U.C. According to the workmen concerned, however, the Colliery Mazdoor Sangh was highly favoured by the management and the workmen concerned's Union, Tata Collieries Workers' Union, was not liked by it. Be that as it may, there is, in my opinion, no doubt that these concerned workmen were members of Tata Collieries Workers' Union, which sponsored their case and took up their cause from the very beginning and represented them throughout from before the Conciliation Officer.

It is true, and is also admitted by both the parties, that there is no documentary evidence to prove or disapprove positively victimisation of these concerned workmen by the management, but, in my opinion, the conduct of the management, as proved by the fact that these two workmen were not informed of the interview and were never asked to appear at the interview on 23rd August 1961, clearly demonstrates the hostile attitude of the management towards these two workmen concerned who were not informed deliberately by the management in order to keep them out of these appointments with a view to victimise and supersede them due to their trade union activities and to appoint other persons of their choice irrespective of their merit as compared with these two workmen.

17. Exhibit W. 5, referred to before, which is a letter written by Ghosal on 30th September 1961 to the Manager, protesting against the appointment of new fitters in this colliery, shows that Ghosal had no information at all till at least 30th September 1961 about the interview which took place on 23rd August 1961, otherwise he would have certainly mentioned about it in Exhibit W. 5. The management also, in its reply sent on 19th October 1961 Exhibit W. 18 as mentioned earlier, did not at all tell Ghosal that he had been asked to appear for the interview but he did not appear in spite of the fact that the said letter Exhibit W. 18 was sent, after the appointment had been made on 1st October 1961 of the new Fitters. These circumstances, in my opinion, very much support the case of the workmen concerned that they had not been informed orally as deposed to by the Colliery Engineer, M.W. 2 and M.W. 1, or on the phone, as mentioned in Para 5 of the letter of Chief Mining Engineer sent to the Conciliation Officer on 24/26 July 1962, Exhibit M. 20.

18. The next question which is the subject matter of reference is whether these two concerned workmen were superseded by appointing the other candidates from other collieries from 1st October 1961 in 5 and 6 pits where these workmen were working from before.

19. I would, now first, give below the history of service of these two workmen concerned in order to appreciate the arguments of the parties.

Shri Bhutnath Ghoshal:

Shri Ghosal, W.W. 1, one of the two concerned workmen, was appointed for the first time, on 26th October 1949 as Electrical Fitter Helper, as will appear from his Service Card Exhibit M. 14. Exhibit M. 14 further shows that Shri Bhutnath Ghosal (referred to hereinafter as 'Ghosal' for brevity) worked as Electrical Fitter from 8th June 1954 to 29th September 1959, and, then again from 24th July 1957 to 1st March 1958. Exhibit M. 15 shows that Ghosal acted as Electrical Fitter upto 27th February 1960, and, Exhibit M. 16 shows that he worked again as Electrical Fitter upto 22nd January 1962. Exhibit W. 16, which is a printed form of appointment of competent persons, shows that he was appointed as Electrical Fitter at 6 and 7 Pits of Jamadoba Colliery on 21st May 1953, but, Exhibit M. 14 does not mention this date as it begins from 21st October 1953. From Exhibits W. 16, M. 14, M. 15 and M. 16, therefore, it is proved that Ghosal was working in this Colliery from 26th October 1949 and worked at this very Colliery as Electrical Fitter from time to time from 21st May 1953 to 21st January 1962.

The above fact is also supported by the appointment letters of Ghosal, whereby he was appointed to work as Electrical Fitter on temporary basis from time to time, such appointment letters are Exhibit W. 6 to W. 17, the earliest being W. 16, dated 21st May 1953 and the latest being W. 17, dated 14th February 1961. Exhibit W. 4 dated 18th September 1952 is a licence granted to Ghosal entitling him to work as Electric Fitter. Exhibit W. 2, dated 5/13 August 1959 is a letter from the Chief Mining Engineer to the Manager of the 6 and 7 Pits Colliery informing him that at the test held Ghosal, Fitter Helper, has come out successful for future appointment as Fitters at the Colliery, and, his case should be considered for any future vacancy temporary/permanent that may occur at the said Colliery.

Shri Sasanka Chakraborty:

The Service Cards Sri S. Chakraborty (hereinafter referred to as Chakraborty for brevity) have also been filed and they are Exhibit M. 17 and M. 18. Exhibit M. 17 shows that he was appointed for the first time on 9th May 1948 as Electrical Fitter Helper in 6 and 7 Pits, with which we are concerned in the present reference He started working as Electrical Fitter from 26th May 1956, and worked as such from time to time upto 30th August 1961. It may be stated here that as against the date 26th May 1956 in Exhibit M. 17 there are over-writings in the column of designation; but it was conceded by Sri G. Prasad, Chief Personnel Officer, appearing for the management, that it may be read as Electrical Fitter Acting. Exhibit W. 25, which is a printed form *Form of Appaintment of Competant Persons* shows that he was appointed as Electrical Fitter at this Colliery on 22nd December 1962 Exhibit M. 18 is blank. From Exhibits M. 17, and W. 25, therefore, it is established that Chakraborty worked as Electrical Fitter from time to time from 26th May 1956 to 21st December 1962 since after his appointment in this Colliery on 9th May 1948.

The licences of the two workmen concerned showing that Ghosal got Wireman's permit on 18th September 1952 Exhibit W. 4, and, Chakraborty got a similar licence on 13th December 1952 Exhibit W. 24; and, Exhibit W. 2 (*Re.* Ghosal) and Exhibit W. 3 (*Re:* Chakraborty) that both came out successful in the test of Electrical Fitter Helpers for future appointments as Fitters coupled with their Service Cards, referred to earlier, prove beyond doubt their superiority over those who were appointed in 6 and 7 Pits on and from 1st October 1961, because none of them possessed these qualifications or their skill or experience at all. It may be mentioned that Exhibit W. 3 mentions the names of two persons, namely, 'I A. Hamid' and '2 Chakraborty,' but in case of A. Hamid he was to be examined again for a permanent job while Chakraborty who was given the second place in Exhibit W. 3, was not to be examined at all, as no such remark is made against his name.

20. The management filed a list of the candidates, who were called for interview for the post of Electrical Fitter on 23rd August 1961, as also the recommendations of the persons interviewing the candidates giving the names of the candidates selected in order of merit. These are as mentioned earlier, Exhibit M. 1 (a) and Exhibit M. (1) respectively. Exhibit M. 1(a) is mentioned as Mark List of candidates called for interview for the post of Electrical Fitter on 23rd August 1961 at 9-30 a.m., and it contains the names of the twenty two candidates who were called for the interview and this does not contain the names of these two concerned workmen, although it contains the names of some candidates who were called for interview but did not turn up for interview, and, such persons are Serial Nos. 3, 5, 6, and 8, against whose names no mark has been given. Exhibit M. 1 is the recommendation of the persons forming the selection Committee for interview and selection of candidates. In this recommendation Exhibit M. (1) six names are given and it is mentioned therein that No. 3 (P. K. Biswas); No. 5 (Jamaluddin); and, No. 6 (M. Biswas may be posted at 6 and 7 Pits, with which we are concerned, and No. 1 (D. K. Ghosh) and No. 2 (S. P. Singh) be posted at Bheltand Colliery, and No. 4—J Tweial-Washing Plant. It may be stated that these six selected candidates were serially numbered according to merit and marked as such.

21. Let us, therefore, now examine their service records in order to be able to judge if these six appointed persons, particularly Nos. 3, 5 and 6, who were appointed in 5 and 6 Pits were senior to and more experienced or more efficient or more qualified than those two workmen concerned.

The Service records of these three persons namely, Nos. 3, 5 & 6, who were appointed at 6 and 7 Pits colliery, have also been filed.

(a) *No. 3 P. K. Biswas:*

The Service Card of P. K. Biswas, (No. 3) who was given the third place, is Exhibit M. 11, and, it shows that he was appointed for the first time on 3rd June 1949 as Electrical Fitter Mdr. (*i.e.* Mazdoor) at this Colliery. Exhibit M. 11 further shows that P. K. Biswas was working before in Bholatand Engineering Department and not in 6 and 7 Pits, to which Colliery he was transferred from 30th October 1961, as Electrical Fitter Ext. M. 11, however, shows that till before his transfer on 30th October 1961, he never at any time since his appointment on 3rd June 1949 worked as Electrical Fitter.

(b) No. 5—Jamaluddin.

The service card of Jamaluddin (No. 5), who was fifth in the list in order of merit and who is one of the three persons recommended to be posted at 6 and 7 Pits, is Exhibit M. 13. Ext. 13 shows that he was appointed in Digwadih Colliery for the first time on 24th May 1951 as Bolt Cooly, and, thereafter, on 26th May 1956 he was promoted as Fitter Helper, and, subsequently, with effect from 1st October 1961 he was promoted as Electrical Fitter, and, transferred to 6 and 7 Pits Colliery on 4th November 1961. Exhibit M. 13 further shows that before 1st October 1961 he never worked even in temporary vacancy as Electrical Fitter, but he was straightaway promoted as Electrical Fitter with effect from 1st October 1961 as a result of his interview on 23rd August 1961.

(c) No. 6 M. Biswas:

Exhibit M. 12 is the service card of M. Biswas (No. 6) and it shows his appointment as Electrical Fitter Mazdoor in Sijua Engineering Department on 24th June 1952. Exhibit M. 12 further shows that he worked as Electrical Fitter Helper from 13th July 1959 and, again from 21st July 1959 to 22nd July 1959 and thereafter he was transferred on promotion as Fitter to 6 and 7 Pits on 31st October 1961. Exhibit M. 12, therefore, clearly shows that before 31st October 1961 he never worked even in temporary vacancy as Electrical Fitter.

22. The service records of these three selected persons who were appointed at 5 and 6 Pits from 1st October 1961 and then of the two concerned workmen, Ghosal and Chakraborty, as discussed above, clearly prove that these two concerned workmen were senior to and more experienced and more efficient than, and had passed test examinations and were declared fit for the post of Electrical Fitter, than the above mentioned three candidates who were appointed.

23. Let us now see the service records also of No. 1 D. K. Ghosh and No. 2 S. P. Singh, who were appointed at Bhelatand Colliery and of No. 4 J. Tura, who was appointed at Washing Plant.

(a) **No. 1 D. K. Ghosh.**—D. K. Ghosh No. 1 was given the first place at the interview as will appear from Exhibit M. 1 and was appointed at Bhelatand Colliery. His service card is Exhibit M. 10, and, it shows that he was appointed for the first time at Bhelatand Colliery on 23rd June 1949 as temporary Fan Khalasi, and, thereafter, he worked as Assistant Electrical Fitter in 1954 for some time, and was promoted for the first time as Electrical Fitter on 15th September 1961. He never worked even in temporary or permanent vacancy as Electrical Fitter at any time during his service before 15th September 1961.

(b) No. 2 S. P. Singh:

His Service Card is Exhibit M. 9. It shows that Sri Prasad Singh (No. 2) in Exhibit M. 1 was appointed for the first time on 10th May 1944 in Bhelatand Engineering Department. His designation was Electrical Fitter Helper. On 10th May 1944, as appears from the first entry in Exhibit M. 9, he was appointed as S. P. Mazdoor. He throughout from 10th May 1944 to 14th September 1961 worked at Bhelatand Colliery either as Electrical Fitter Mazdoor or Assistant Electrical Fitter or Electric Fitter Helper and never even for a day even in a temporary vacancy as Electric Fitter here or anywhere before 15th September 1961 when he was appointed as Electrical Fitter in the same colliery at Bhelatand where he was working.

(c) No. 4 Janki Tura:

His service card is Exhibit M. 8. It shows that he was first appointed on 5th June 1946 as Stowing Cooly in Malkera Chetoidh Colliery. In course of his service he worked either as Mechanical Fitter Cooly or Electric Fitter Helper on and from 26th May 1956 before his appointment as Electric Fitter at the Washing Plant on and from 1st October 1961. Never before 1st October 1961 he worked even in a temporary vacancy as Electric Fitter here or anywhere.

24. From the service records of these two concerned workmen and of the above mentioned three persons, who have been appointed as a result of the interview on 23rd August 1961, at 6 and 7 Pits, as also of the above named three persons who were appointed in the other Collieries, there is no doubt that these two concerned workmen had previous experience as Electrical Fitter for a pretty long time and were undoubtedly much senior in service to at least Jamaluddin and M. Biswas appointed on 1st October 1961 at 6 and 7 Pits. It is true that Ghoshal was appointed on 26th October 1949 and No. 3 P. K. Biswas was appointed earlier

on 3rd June 1949 and in that respect P. K. Biswas was senior in service to Ghoshal but there is absolutely no comparison in merit, efficiency, experience and qualification of these two concerned workmen and the three persons appointed at 6 and 7 Pits on and from 1st October 1961.

It is true that D. K. Ghosh, S. P. Singh and Tura, who were appointed in the other Collieries, were senior in service to these two concerned workmen, but on a comparison of the service records of these three also along with those of these two concerned workmen, there can be no doubt that these two workmen were more experienced, more efficient and more qualified than these three also.

I cannot understand how a person who has passed the test examination and declared fit for the post of Electrical Fitter can be said to be less qualified or less experienced than a person who has not yet passed the test examination or held the post of Electrical Fitter even for a day before his present appointment. By no stretch of imagination even this stand of the management can be maintained and held to be just, fair, bonafide and in the ordinary course of business.

We are, however, more concerned with the three persons—P. K. Biswas, Jamaluddin and M. Biswas—who were appointed at 6 and 7 Pits Colliery from 1st October 1961 in supersession of the claims of these two workmen concerned.

Furthermore, when these two workmen concerned were not asked to appear along with the other twenty-two candidates, for the interview on 23rd August 1961, how on earth it can be said that these appointed were more qualified and more suitable.

25. For the reasons given above, there is no doubt, in my mind, that those two concerned workmen were deliberately kept out of the interview to punish them and to victimise them for their trade union activities as alleged by the concerned workmen, but not admitted by the management.

I am convinced that if these two concerned workmen had also been called or asked to come for the interview along with the other twenty-two candidates [*vide* Exhibit M. 1(a)] and if the Selection Committee had interviewed all these twenty-two candidates, and selected on merit, along with these two workmen concerned, they would have undoubtedly been given top positions and appointed at 6 and 7 Pits in preference to the three appointed there.

26. In my opinion, therefore, the fact that these two workmen concerned in spite of being more efficient, more experienced and more qualified than these three appointed on 1st October 1961, were not called for the interview to appear on 23rd August 1961 to compete and to be considered along with these selected for the post, indicates amply that it was done with a view to victimise them for their trade union activities, and, this action of the management was certainly malafide and an unfair labour practice.

27. It was argued, on behalf of the workmen concerned, that the management's alleged practice of informing candidates orally, although, before and after the said interview, written notices were issued to the intending candidates, as mentioned before, even if true, shows an unfair labour practice, in asmuch as if this procedure is allowed and approved it will be certainly very unfair to the intending candidates and it will cause great injustice to the workers because in such a case the management will call for interview only those workers who would be liked by it and it would not inform those, in spite of their seniority, and more experience, whom they would be annoyed with. I entirely agree with this contention.

28. The case of the management that the work of Electrical Fitter for maintenance work required work of special nature, in my opinion, is an afterthought and is without force. This case made out by the management in Para 5 of its written statement cannot be accepted as correct. I cannot understand how can an Electrical Fitter Helper, who has never worked before even in a temporary vacancy as Electrical Fitter, can be said to possess special qualification and more skill than an Electrical Fitter Helper, who has already passed the Workmanship Examination and who has worked before several times as Electrical Fitter in temporary/permanent vacancy and who has come out successful at the test held by the Chief Mining Engineer. Moreover, when these workmen, on my finding were deliberately not called for the interview on 23rd August 1961, how can it be said that they did not possess the alleged special nature of qualification? I, therefore, reject this contention of the management put forward in justification of its case as to why these two workmen were not appointed.

29. No document, as admitted by the management also, has been produced to prove that the vacancies which occurred and which were filled in by the interview on 23rd August 1961 were beyond the sanctioned strength and that these posts required a special aptitude for maintenance, as alleged by the management in para 5 of its written statement. M. W. 1, Assistant Chief Engineer, admitted, at page 3 of his deposition, that he had not filed any specific document for showing that the test held on 23rd August 1961 was for preventive maintenance job nor for showing that the job performed by the persons appointed on 1st October 1961 were of maintenance nature. He, no doubt, said that there was difference in the nature of work performed by a normal maintenance Fitter and a Preventive Maintenance Fitter, but, he admitted towards the end of his cross examination, at page 4, that the preventive maintenance does not require any additional skill or qualification different from that a normal Electric Fitter. W.W. 1 and W.W. 2 the two concerned workmen, said that there was no difference at all in the nature of the work performed by them and to be performed by the persons appointed on 1st October 1961, and, that the job performed by the persons who were appointed on 1st October 1961 did not require any special skill or any extra qualification, other than these they, the two concerned workmen, possessed.

It may also be mentioned here that never before in any of the letters written by the management before 24/26th July 1962, Exhibit M.20, the management made out its present case of a special skill.

In my opinion, therefore, the entire basis of the case of the management fails. But, as I said before, this question is not very material in the present case, when it has been found by me that these two concerned workmen were deliberately not informed or asked by the management to appear at the interview on 23rd August 1961 just to victimise them and supersede them because the management was displeased with them for being members of the Union, which was not liked by the management, and, therefore, much junior and less experienced people were freshly recruited to the post of Electric Fitter in 6 and 7 Pits, where these concerned workmen were working from before in supersession of their just claims.

30. It was argued by Sri Prasad that W.W.1, B. Ghosal, did not make any grievance of victimisation, but he only said that he had been harrassed by the Colliery Manager, and, that W.W.2, S. Chakraborty, only says that he was victimised and harrassed by the officers of the management. That is so, but, in my opinion, the conduct and the attitude of the management, as disclosed by the documents mentioned before, prove beyond any reasonable doubt that it deliberately with a *malafide intention* and with unterior motive, just to supersede these two concerned workmen, did not inform them or ask them to appear at the interview on 23rd June, 1961, because, on the documents before me, there appears to be no doubt that if they had appeared and appeared along with others who were selected on 23rd August 1961, these workmen concerned surely would have been appointed in preference to these who were appointed from 1st October 1961 in this Colliery. If that was not so, what, on the earth, was the reason that the management did not inform them and did not ask them to appear for the interview on 23rd June, 1961? Further, what is the reason that, in the evidence and in its case before the Tribunal, the management says that these two concerned workmen as also others were orally informed by M.W.2, but in the letter, Exhibit M.20, written by Chief Mining Engineer to the Conciliation Officer, he says that the candidates were informed on the phone? Where is the evidence that these two concerned workmen had telephone connections in their quarters or in the shift place where they were working or that they were informed on the phone, and if so by whom, and when? Even in the letter, Exhibit M.20, it is not said as to who informed these two candidates as also others on the phone to appear on 23rd August 1961, because neither the Colliery Manager, nor the Assistant Chief Mining Engineer M.W.1 nor M.W.2 says a word about informing the intending candidates, including these two workmen concerned, by phone.

31. For the reasons expressed above, I would answer the reference in favour of the two workmen concerned by holding that the supersession of the claim for promotion of Sarvashri Sasanka Chakraborty and Bhuthnath Ghoshal, Electric Fitter Helpers of 6 and 7 Pits of Jamadoba Colliery of Messrs. Tata Iron and Steel Co. Ltd., was unjustified and *malafide* and not proper, and, therefore, it must be quashed, and, accordingly, it is hereby set aside.

32. The next question is to what relief, if any, are these two workmen entitled? In my opinion, they are entitled to relief. They should be deemed to have been appointed as Permanent Electrical Fitters at 6 and 7 Pits of Jamadoba Colliery with effect from 1st October 1961 and would further be also deemed to be seniors

to all the three persons—P. K. Biswas, Jamaluddin and M. Biswas—who were appointed from 1st October 1961 at 6 and 7 Pits of this Colliery, and, as such they would be entitled to the wages etc., of Permanent Electrical Fitters from that date, but their wages, if any, as Electrical Fitters Helpers, which they might have got before 1st October 1961, will be deducted from their wages as Permanent Electrical Fitters, and they would be entitled to get only the balance up-to-date. In the circumstances of the case, however, each party will bear its own cost.

33. I further direct that this award must be implemented within one month from the date when this award becomes effective under Section 17 of the Act.

34. This is my award which I make and submit to the Central Government under Section 15 of the Act.

Dhanbad,

The 30th March, 1963.

(Sd.) RAJ KISHORE PRASAD,

Presiding Officer,

Central Govt. Industrial Tribunal, Dhanbad.

[No. 2/87/62-LRII.]

New Delhi, the 30th May, 1963

S.O. 1563.—In pursuance of section 17 of the Industrial Disputes Act, 1947, (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Dhanbad, in the industrial dispute between the employers in relation to the Nowrozabad Colliery of Messrs. Associated Cement Companies Limited and their workmen.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, DHANBAD.

REFERENCE NO. 26 OF 1962.

PARTIES:

Employers in relation to the Newrozabad Colliery of Messrs. Associated Cement Companies Limited.

AND

Their workmen.

PRESENT:

Shri Raj Kishore Prasad, M.A., B.L.,—*Presiding Officer.*

APPEARANCES:

For the Employers.—Shri S. D. Vimadalal, Barrister-at-Law, with Sri J. D. Sumariwalla.

For the workmen.—Shri K. B. Chougule.

STATE: Madhya Pradesh. INDUSTRY: Coal.

Camp: *Bombay, dated the 23rd April*, 1963

AWARD

The Ministry of Labour and Employment, Government of India, by its Order No. 1/1/62-LR. II, dated 20th July, 1962, referred, under Section 10(1)(d) of the Industrial Disputes Act, 1947, for adjudication to this Tribunal the following industrial dispute between the parties to this reference:

"(1) Is the demand for payment of overtime wages for the work performed by Shri J. S. Pathak, Oil Issuer, from January, 1957, to April, 1961, justified. If so, to what relief he is entitled.

(2) Whether—

(i) Shri Sitaram, Labour Supervisor.

(ii) Sarvashri W.K. Sheikhdar, Kesab Prasad, R. S. Agarwal or any other member of the Time Office Staff, and

(iii) The office peons,

are entitled to get any overtime wages for the period commencing from the 21st August, 1960? If so, what amount are they entitled to get."

2. The workmen concerned filed their written statement on 21st August, 1962, and, a supplementary written statement, thereafter, on 22nd August, 1962. The management also filed, at first, its preliminary written statement on 10th August, 1962, and, thereafter, a further written statement, by way of rejoinder, on 12th November, 1962.

3. The case was taken up for hearing in Bombay on 20th April, 1963, when Sri S. D. Vimadalal, assisted by Sri J. D. Sumariwala, appeared for the management and Sri K. B. Chougule appeared for the workmen concerned, and, both the parties informed the Tribunal that this case had almost been amicably settled between the parties, and, therefore, they should be allowed sometime to file agreed minutes of the compromise between the parties, and, accordingly, the case was fixed for filing terms of compromise on 22nd April, 1963, on which date a joint compromise petition, signed by both the parties to this reference, was filed incorporating the terms of settlement between them.

4. I have read the terms of settlement filed before me and also heard the parties and I am satisfied that the compromise is quite reasonable and fair and in the interest of both the parties, and, accordingly, the said compromise is accepted.

5. The reference is, accordingly, disposed of in terms of the said compromise, which is marked *Annexure* A and an award is made on the basis of the same and the said settlement Annexure A, is made a part of this award.

6. This is my award which I make and submit to the Central Government under Section 15 of the Act.

(Sd.) RAJ KISHORE PRASAD,
Presiding Officer, Central Govt. Industrial Tribunal,
Dhanbad.

Camp: *Bombay, 23rd April,* 1963

ANNEXURE A

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, DHANBAD

REFERENCE No. CGIT 26 OF 1962

In the matter of the industrial disputes between the Management and the workmen of the Nowrozabad Colliery of the Associated Cement Companies Limited.

Joint petition submitted on behalf of the workmen and the Management of the Colliery

The parties hereto at the suggestion of this Hon'ble Tribunal have come to a settlement on all the issues in Reference No. CGIT 26 of 1962. The parties pray that an award be made in terms of the settlement

TERMS OF SETTLEMENT

It is clearly understood that this settlement has been entered into with a view to create goodwill and amity between the parties and is without prejudice to the rights and contentions of the parties to the dispute.

(2) It is also further agreed by and between the parties that this settlement shall not be quoted, referred to and/or relied upon in Reference No. CGIT 41 of 1962 which is now pending before the Central Government Industrial Tribunal, Bombay and nothing contained herein shall be construed to prejudice the rights and contentions of the parties in Reference No. CGIT 41 of 1962, or in any other matter.

(3) *Issue No.* 1.—It is agreed that Shri J. S. Pathak will be paid a lump sum of Rs. 190 (Rupees One hundred and ninety only) in full and final settlement of all claims in terms of the reference against the Company till date.

(4) *Issue No.* 2(i).—It is agreed that Shri Sitaram will be paid a lump sum of Rs. 750 (Rupees Seven hundred and fifty only) in full and final settlement of all claims in terms of the reference against the Company till date.

(5) *Issue No. 2(ii).*—(a) It is agreed that Shri N. K. Mukherji will be paid a lump sum of Rs. 120 (Rupees One hundred and twenty only) in full and final settlement of all claims in terms of the reference against the Company till date.

(b) It is further agreed that S/Shri K. N. Sharma, W. K. Sheikhdar, Keshav Prasad, R. S. Agarwal, C. D. Gosh, Makarand Prasad, Jaydayal, S. S. Dass and M. D. Surti will each be paid a lump sum amount of Rs. 100 (Rupees one hundred only) in full and final settlement of all claims in terms of the reference against the Company till date.

(c) It is also agreed that S/Shri S. K. Mukherji, Hitendra Singh, V. N. Singh, Ishwar Singh and Ratnakar Singh in terms of reference have no claim.

(6) *Issue No. 2(iii).*—(a) It is agreed that Shri Amirali will be paid a lump sum of Rs. 115 (Rupees One hundred and fifteen only) in full and final settlement of all claims in terms of the reference, till date against the Company.

(b) It is also agreed that S/Shri Kadirbux, Sardarali, Bhagwat, Jagdish, Baboolal and Gendlal will each be paid a lump sum amount of Rs. 70 (Rupees Seventy only) in full and final settlement of all claims in terms of the reference till date against the Company.

(c) The Union drops the claim of Shri Dhanoo.

Dated at Bombay, this 22nd day of April, 1963.

For and on behalf of the workmen of the Nowrozabad Colliery.	For and on behalf of the Associated Cement Cos. Ltd., (Nowrozabad Colliery)
(1) K. B. CHOUGULE, General Secy., Nowrozabad Colliery Mazdoor Sangh.	(1) J. D. SUMARIWALLA,
(2) G. R. SWAMY, Secy. Nowrozabad Colliery Mazdoor Sangh.	(2) M. S. KAPOOR,
(3) S. R. PALIWAL, Executive Member, M.P., I.N.T.U.C.	

[No. 1/1/62-LRII.]

S.O. 1564.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of Sarvashri R. H. Wright and Kanti Mehta, Arbitrators, in the industrial dispute between the employers in relation to the Parbelia Colliery of Messrs Bengal Coal Company Limited and their workmen.

AWARD

1. This is a reference under subsection 3 of Section 10(A) of the Industrial Disputes Act for arbitration of an industrial dispute between the employers in respect of Parbelia Colliery of Messrs. Bengal Coal Co. Ltd. (hereinafter referred to as the Company) and their workmen represented by Colliery Mazdoor Sangh (hereinafter referred to as the Union) made by the Government of India, Ministry of Labour and Employment on 16th March, 1963. The points of dispute as agreed upon by the parties were over disqualification of the workers to earn bonus, wages, leave, sick wage, return train fare and continuation of services for the purposes of qualifying leave for 1963, etc. due to a strike at the colliery from 20th July, 1962 to 26th August, 1962.

2. The Company was represented by Mr. W. J. Jameson (Labour Adviser) and Shri U. R. Paul (Labour Relations Officer) and the Union by Shri S. Das Gupta (Secretary, Colliery Mazdoor Sangh) and Shri L. P. Tripathi (Secretary, Parbelia Colliery Branch of Colliery Mazdoor Sangh).

3. The admitted case of both the parties is that 2405 workmen were on the pay roll of the colliery on 19th July 1962 when 480 workers took recourse to strike without any previous notice and brought the working of the mine to a standstill. As a result a large section of the willing workers were forced to remain idle and

the Company on 27th July, 1962 issued a notice of lay-off under the provisions of Section 25(C) and 25(E) (iii) of the Industrial Disputes Act. The work was, however, resumed on 27th August, 1962.

4. In spite of the aforesaid points of agreement, there is a wide difference as to the stand of the parties in other important aspects.

5. It was represented to us by the Union that it will be a sad day for the country, for the industry and for the workers if the majority is forced to suffer for the hasty and motivated action of a small section of the workers. The strike was engineered by a small group inspired by personal and factional motives and the strike was not over any current industrial dispute. If the Company had been alert, active and vigilant and if the Police help was readily sought and obtained, this deadlock could have been broken immediately as a large section of the workmen were willing to work all along and actually the Union had written a letter to the management to that effect on 21st July, 1962. Hence it cannot be said to be a proper case of lay-off and the workmen cannot be denied the benefits of attendance in respect of quarterly bonus for the quarter ending September, 1962, festival holiday with pay on 15th August, 1962, sick wages (sick khoraki of those who fell sick), return train fare of those who returned back in time but could not resume duties because of the strike, earned leave for 1963 based on the attendance of 1962 and the wages for the period from 20th July, 1962 to 26th August, 1962, particularly when the Company made no arrangements for recording attendances during the period of lay-off. The Union particularly contends that the lay-off notice was dated 26th July 1962 and for the period prior to the said notice, the Company can have no excuse for denying the wages. It is also contended by the Union that the lay-off was not due to strike but due to the absence of proper Police and Security arrangements against violence and as such the lay-off notice cannot deny the lay-off compensation provided in the Industrial Disputes Act.

6. The case of the Company, however, is that if a large section of the workmen numbering about 1900 had boldly faced the situation and asserted their right to work, then a small section of workers would not have been able to hold them to ransom. There was no shortcoming from their side so far as the security measures were concerned. The police were duly informed; if the police protection was inadequate, the Company could not be blamed for the same. According to the Company also only 480 workers were actively on strike; out of the remaining, 802 workers were really eager to join work during the period of strike and actually did work one shift or more and it was only in the case of these workmen that a separate treatment was called for; the rest who neither joined the strike nor individually come forward for work should be treated as just sitting on the fence. The lay-off, according to the Company, was for reasons visualised order Sec. 25E (iii) of the I.D. Act. As for the period from 20th July, 1962 to 25th July, 1962 when no lay-off was declared, those who did not join work should be deemed to be on strike and/or absent and as such should not get any wages for that period.

7. This is a peculiar case and as such requires treatment on its special merits without enunciating any principle for the future. We are, therefore, of the opinion that even if it was desirable, it will be difficult, if not impossible, to divide the workers in three groups—strikers, willing workers and non-strikers, and we have no proper materials to arrive at such a conclusion either. Had the parties agreed on this point of facts, our trouble would have been greatly minimised. In the absence of the same we make the two divisions. (i) those who participated in the strike and (ii) those who did not join the strike. Both the parties have agreed before us that the strike was unjustified and as such we are not called upon to go into that question. While the strike is a recognised weapon in the hands of the workers for the purpose of collective bargaining in appropriate cases, the decisions of the industrial tribunals and the Courts have always disapproved of hasty and lightning strikes without exploring the constitutional methods of settlement through the conciliation machinery. But here the strike was not only without any notice and without any conciliation proceedings but also unrelated to any industrial dispute; moreover, violent methods were adopted to create conditions for the success of the strike. We, however, have every sympathy for the Company and the non-strikers, both of whom suffered and were victims of this unfortunate situation. In these circumstances, the theory of 'a pound of flesh' will not advance the cause of justice and industrial peace. The responsibility of the parties, *i.e.*

the non-strikers *vis-a-vis* the employers cannot be determined with arithmetical precision. On the facts and circumstances of the present case and without creating any precedent for the future we consider that the ends of justice in this particular case will be properly met if in respect of the non-strikers, *i.e.* to all workers other than the 480 workers who were on strike and whose names were submitted to us in a list agreed to by both parties:—

(a) the period from 20th July 1962 to 26th August 1962 is treated as attendance by workers for the purpose of entitlement to—

(i) bonus for the quarter ending September, 1962

(ii) return railway fare

(iii) leave with wages under the Mines Act

(iv) sick wages/khoraki for those who were sick prior to the commencement of the strike.

Such attendance will not qualify workers to earn wages for the period mentioned above *i.e.* (from 20th July 1962 to 26th August 1962), (b) the wages for holiday on the 15th August are paid to workers.

8. We make our award accordingly.

R. H. WRIGHT
22-5-63

KANTI MEHTA,
22-5-63

[No. 8/46/63-LRII.]

New Delhi, the 31st May 1963

S.O. 1565.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Lucknow, in the industrial dispute between the employers in relation to the State Bank of Bikaner and Jaipur and their workmen.

BEFORE THE INDUSTRIAL TRIBUNAL (CENTRAL), 23, A. P. SEN ROAD, LUCKNOW

PRESENT:

Sri J. K. Tandon—Presiding Officer.

CASE NO. 2 OF 1963 (CENTRAL)

In the matter of an industrial dispute between the concern known as M/s. State Bank of Bikaner and Jaipur, Jaipur.

Vs.

Their Workmen.

APPEARANCES:

For the employers: Sri H. C. Chhabra, an Officer attached to the Law Department at Head Office.

For the workmen: Sri R. L. Khandelwal, General Secretary, Rajasthan Bank Employees' Union, Jaipur.

Industry: Banking District: Jaipur.

Dated May 21, 1963

AWARD

In an industrial dispute referred *vide* Order No. 51(2)/63-LRIV, dated 28th March, 1963 of the Ministry of Labour and Employment under Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (XIV of 1947).

The present reference is by the Central Government under Clause (d) of sub-Section (1) of Section 10 of the Industrial Disputes Act, 1947 (Act XIV of 1947), referring the following matter of dispute for adjudication:—

Matter of dispute

"Whether the amount of 50 nP. per night paid to Shri Man Singh, Peon in the Bali Branch of the Bank during the period March 1962 to May 1962 for performing the night guard's duty constitutes sufficient remuneration and, if not, to what further relief is he entitled?"

2. The material facts, which are more or less undisputed, are these: The regular Watch and Ward Guard on night duty at the Bali Branch of the State Bank of Bikaner in Jaipur proceeded on leave on and with effect from March 2, 1962, necessary arrangement in his place, therefore, became imperative. The Bank's allegation is that Man Singh, as soon as he came to know of the expected arrangement, approached the Branch Manager and requested him to depute him to stay at the Bank during the night in place of the guard proceeding on leave, and that the Branch Manager accepted his suggestion and offered in turn to give him an allowance of 0·50 n.P. per night for his stay at the Bank. The allegation further is that Man Singh whole-heartedly accepted this offer and slept during the night in the Bank premises from 2nd March, 1962 to 15th April, 1962 and again, after an interval of three days, from 18th April, 1962 to 8th May, 1962. It will thus appear that he stayed there for sixty-six days and was also paid Rs. 33 at the rate of 0.50 nP. per night. Man Singh already belonged to the subordinate staff of the Bank being a Peon for which he received his wage separately. The night duty performed by him was over and above his normal duty as a Peon.

3. Some other facts are that Man Singh while receiving the amount of Rs. 33 at the rate of 0·50 nP. per night granted a receipt also therefor in favour of the Bank. In this document he stated that he had received the amount "being sleeping allowance for sleeping duty given during night time in the Bank from 2nd March 1962 to 15th April 1962 and from 18th April 1962 to 8th May 1962 in full and final settlement of my (his) claim". Earlier also on March 2nd, 1962 when he was deputed on the work, he received—a fact not disputed—the following Order by the Manager:—

"OFFICE ORDER

As there is only one guard at present in the Bank Shri Man Singh, peon, will give sleeping duty during the night till other arrangement is made. He will be paid 0.50 nP. per night for the sleeping duty.

4. The workmen contend that the duty entrusted to Man Singh and discharged by him from March 2, 1962 to 15th April, 1962 and again from 18th April, 1962 to 8th May, 1962, was in addition to his normal duties, it therefore was overtime for which the employers ought to pay at rates applicable to overtime work. As however he has been paid therefor at the flat rate of eight annas per day, they have demanded payment to Man Singh at the overtime rate for the total 528 hours. With regard to the allegation by the Bank, namely, the arrangement that Man Singh had accepted to receive compensation at the rate of 0.50 nP. per day, their case briefly is that the same was contrary to the Sastry Award as also against the Desai Award which governed the parties, consequently, is null and void. They have also attempted to get away from the receipt (the material extract from it has been reproduced earlier) by alleging that Man Singh did not know English in which language it was prepared. The insinuation is that he never made it intelligently.

5. The Bank's reply is that Man Singh is bound by the arrangement which was voluntarily accepted by him, that the night duty performed by him was not, nor could be said to be, overtime work and that he executed the receipt intelligently and voluntarily. They further assert that Man Singh knows to read and write English.

6. The above pleas and counter-pleas gave rise to the following issues:—

(1) Was Man Singh justified in asking for increased allowance inspite of his agreeing to receive @ .50 per day at the commencement of his deputation?

(2) Whether he is entitled to claim increased allowance in view of the duties performed by him? What duties did he performed?

(3) Is he debarred from claiming a higher rate in view of his receiving the same at .50 per day?

FINDINGS

Issues Nos. 1 *to* 3

7. All the three issues can usefully be taken up together. The material facts, as already noted, are either admitted or otherwise proved. Man Singh is a member of the subordinate staff being a peon, he does not belong to Watch and Ward Establishment. Ordinarily, therefore, the duty discharged by him by staying at the Bank premises at nights during the periods above-mentioned was beyond his normal functions. The Bank examined Sri B. L. Nanavati, the Branch Manager at Bali, to prove the circumstances in which Man Singh was deputed to stay at the Bank on these nights. He has stated that Man Singh on knowing that the regular Watch Guard was proceeding on leave approached him with the request to depute him in his place. He further deposes that he accepted Man Singh's offer and told him that his duty will consist in sleeping at the premises for which he will be paid .50 nP. per night. His testimony also is that Man Singh gladly accepted this suggestion and started working accordingly. The duty of a guard includes the making of rounds at convenient intervals in the Bank premises. Sri Nanavati, therefore, states that Man Singh was not required to do any such work; on the contrary, the assignment entrusted to him was merely to attend the Bank in the nights and sleep there.

8. This part of the Bank's evidence has not been accepted by the workmen, but I see no reason why Sri Nanavati, who entered the witness box and gave the details, should not be believed. Apart from what he has stated, the Office Order, Ex. E-1, which Man Singh received on 2nd March, 1962, itself mentioned that he (Man Singh) will give sleeping duty. The payment of 50 nP. was too described to be compensation for sleeping duty. The workmen attempted no cross-examination on the above details by Sri Nanavati nor tendered any evidence in rebuttal. There is absolutely no material to suggest a different version than is given by Sri Nanavati. I will be justified under the circumstances in concluding that Man Singh had indeed voluntarily agreed to perform the particular job and to receive a compensation of 50 nP. per day therefor, and further that the assignment was to stay and sleep at the Bank premises during the night on the above dates.

9. Before I considered some of the arguments urged in the case, one more fact will need to be stated. Man Singh is not illiterate but can read and write in English in which language Exs. E-1 and E-2 are written. Both these documents bear his signatures in Roman characters. It is not possible to accept under the circumstances that he was not aware of their contents. The Branch Manager also testified that Man Singh knew them and had willingly accepted also the same. Since Man Singh did not care to enter the witness box or afford to the other side an opportunity to test his allegation to the contrary, it by itself is one further circumstance against him. I have no doubt that he willingly executed these documents and did so with full acquaintance with their contents also.

10. It is admitted that the night duty performed by Man Singh was over and above his duty in his capacity of a peon. The workmen, therefore, contend that it must for that reason be held as overtime work. Overtime work has, in my opinion, a definite concept. It ordinarily means the performance by the workman of his normal duties *i.e.* duties pertaining to his appointment, beyond the prescribed hours. Every work done by him even in different capacities and whether connected or not with his regular job cannot be described as overtime work. A person may accept a separate and independent assignment unconnected with his normal job with promise to perform the same outside the prescribed hours for the latter, but the work done by him beyond them will not be overtime work in the technical sense. If it is a separate and independent assignment, it will indeed be treated as such and also judged similarly.

11. In the instant case I am constrained to feel that the night duty entrusted to Man Singh was a new and separate assignment undertaken by him. Though the employers in both instances happened to be the same person, the two did not for that reason become one transaction. The duties performed by Man Singh in his capacity as a peon were independent of the work entrusted to him on March 2nd, 1962. The time spent by him in discharging this job cannot be tacked with his normal functions as peon, nor can the same be held to be overtime.

12. The learned representative for the workmen contended that the Bank in requiring or even in agreeing with Man Singh to do the night duty contravened

the provision of Sastri Award, which in his opinion provided that any work in whatever circumstances done beyond the prescribed hours is overtime. He relied in support, on Para 301 of the Award wherein reference is made to an earlier Award by Sen. His interpretation of this paragraph is that any work in excess of the amount of work fixed is overtime. To my mind, this is neither the meaning nor the intention of the provision, which on the contrary has to be construed in the context of the fixed hours of work vis-a-vis any particular job which a workman might be holding at the moment. The distinction arising in the case of a separate and independent assignment was not before the learned arbitrator nor can, therefore, be ignored. I do not think the workmen can really benefit by this provision.

13. The next point to be considered is whether the amount already paid, i.e. at the rate of 50 nP. per night, is insufficient, also can the workmen ignore the fact that Man Singh had agreed to the same. In an appropriate case Industrial Tribunal has power on overriding principle of social justice to relieve workman from the terms of an agreement otherwise concluded by them. But the law of contract, which is part of the law of the land, governs them also. The discretion given to Industrial Courts to relieve a party from the hardship of a contract is based on considerations of social justice including the achievement of industrial peace in the background of the unequal position occupied by the workmen. In the instant case it has not been possible to discover any circumstance which will entitle the Tribunal fairly and justly to interfere with the arrangement reached by Man Singh. It is true that the meagre payment of 50 nP. per night or Rs. 15 per month allowed to him for the extra work entrusted to him was a small fraction only of the wage which otherwise would have been payable to a Guard, but one must not overlook that Man Singh had not to perform the full duties of a Guard, he was required to sleep and to attend if there was some knocking or other alarm. Further, he was already holding one job and receiving his full wage therefor. Also, he himself offered to take up the assignment and consented to receive the amount, and, as the evidence of the Branch Manager is, never raised any voice against it whether in the beginning or at the time of payment. To allow him or the workman to ignore these facts and raise a plea for increased payment would neither advance industrial peace nor good faith nor good morals; on the contrary, will encourage mutual distrust and even cause strained relations. Despite the fact, therefore, that the amount promised to Man Singh was proportionately smaller than is payable to a Guard, I am not in favour of interfering with it. In coming to this conclusion I have not overlooked the fact also that the duty actually given to him was of sleeping at the Bank premises and not the full duties expected of a guard.

14. The net result of the foregoing discussion is that the workmen are not entitled to any relief. I make my award accordingly. No order is made as to costs.

J. K. TANDON,

Presiding Officer,

Industrial Tribunal (Central), Lucknow.

[No. 51(2)/63-LRIV.]

New Delhi, the 1st June 1963

S.O. 1566.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Calcutta, in the industrial dispute between the employers in relation to the Madanpur Colliery, Post Office Andal, District Burdwan, West Bengal and their workmen.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, CALCUTTA

REFERENCE No. 45 OF 1962.

PARTIES:

Employers in relation to the Madanpur Colliery, P.O. Andal, District Burdwan, West Bengal

AND

Their workmen.

PRESENT:

Shri L. P. Dave—*Presiding Officer.*

APPEARANCES:

On behalf of employers—Shri S. N. Murarka, Director.

On behalf of workmen—Shri Sunil Sen, Organising Secretary, Colliery Mazdoor Sabha.

STATE: West Bengal. INDUSTRY: Coal Mines.

AWARD

The Government of India, Ministry of Labour and Employment by their order No. 6/7/62-LRII, dated 23rd November 1962, referred the industrial dispute existing between the employers in relation to the Madanpur Colliery and their workmen in respect of the question whether the Management was justified in stoping from work Shri Aswiny Ankuria, Pump Khalasi, from 2nd September, 1962 and if not, to what relief the said workman was entitled, for adjudication to this Tribunal.

2. In response to notices issued by the Tribunal, the parties filed their written statements. The matter was then fixed for hearing, but was adjourned once at the instance of the Union and once at the instance of the employers. It was once more adjourned at the joint request of the parties as they were negotiating a compromise Before the next date of hearing, a memorandum of settlement was received by post. On the date of hearing, the Union representative appeared and accepted and admitted the memorandum of settlement. The employers' representative admitted it to-day (a copy of the memorandum of settlement is appended herewith).

3. The matter relates to a workman named Shri Aswiny Ankuria, who was dismissed by the management on 2nd September 1962. Under the settlement he was to be reinstated within 15 days from 8th April 1963. He was also entitled to leave wages etc. for the year 1962 and the period of unemployment was to be treated as leave without pay and there was to be no break in service. I may also state that he has actually been taken back and has joined his duty. In my opinion, the compromise is fair and reasonable and I therefore accept it.

An award in terms of the settlement is therefore ordered to be passed.

Sd./- L. P. DAVE,
Presiding Officer.

The 24th May, 1963.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, CALCUTTA

REFERENCE No. 45 OF 1962.

In the matter of an "Industrial Dispute under the Government order of Reference No. 6/7/62-LRII, dated 23rd November 1962".

BETWEEN

M/s. Sree Madanpur Coal Co. (P) Ltd.,
(Prop. Madanpur Colliery),
P.O. Ondal, District Burdwan.

AND

Their Workmen as represented by,
Colliery Mazdoor Sabha,
G.T. Road,
Asansol.

The Colliery Mazdoor Sabha and the management of the Madanpur Colliery came to the following agreement:—

1. That Shri Aswini Ankuria will be taken back as a Pump Khalasi. The period of unemployment will be treated as leave without pay and there will be no break in his service.

2. He will be entitled to leave wages etc. for the year 1962.

3. He will gain his duty within 15 days from 8th April, 1963.

An award may be made to this effect.

Sd./- Illegible.
Vice President,
Colliery Mazdoor Sabha.
Dated: 8th April, 1963.

On behalf of the
Madanpur Colliery.
Sd./- S. N. MURARKA,
Dated: 8th April, 1963.

I accept and admit this agreement.
Sd./- S. N. MURARKA,
24-5-63.

I accept and admit the agreement.
Sd./- SUNIL SEN,
Organising Secretary,
C.M.S.,
17-5-63.

[No. 6/7/62-LRII.]

New Delhi, the 1st June 1963

S.O. 1567.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Dhanbad, in the matter of certain applications under Section 33A of the said Act from Sarvashri Musaheb Ram, Line Mistry, Mundrika Ram, Shale Picker and others of collieries owned by Messrs Tata Iron and Steel Company Limited.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, DHANBAD.

In the matter of complaints under Section 33A of the Industrial Disputes Act, 1947 (XIV of 1947).

COMPLAINT No. 6 OF 1961
(arising out of Reference No 49 of 1960)

PARTIES:

1. Shri Musaheb Ram, Line Mistry.
2. Shri Mundrika Ram, Shale Picker.
3. Shri Ram Lal, Watchman.
4. Shri Khelawan Ahir, Miner

C/o Digwadih Colliery, P.O. Jealgora, District Dhanbad—*Complainants*

Vs.

Messrs. Tata Iron and Steel Co. Ltd.,
Jamadoba, P.O. Jealgora, District Dhanbad—*Opposite parties.*

COMPLAINT No. 7 OF 1961
(arising out of Reference No. 49 of 1960)

PARTIES:

1. Shri Musaheb Ram, Line Mistry.
2. Shri Khelawan Ahir, Miner.
3. Shri Mundrika Ram, Shale Picker.

C/o Digwadih Colliery, P.O. Jealgora, District Dhanbad—*Complainants.*

Vs.

Messrs. Tata Iron and Steel Co. Ltd.,
Jamadoba, P.O. Jealgora, District Dhanbad—*Opposite parties.*

COMPLAINT No. 9 OF 1961
(arising out of Reference No. 9 of 1960)

PARTIES:

Shri Jhari Turi, Surface Trolleyman,
6 and 7 Pits Colliery, P.O. Bhaga,
District Dhanbad—*Complainant.*

Vs.

Messrs. Tata Iron and Steel Co. Ltd.,
6 and 7 Pits Colliery, Jamadoba, P.O. Bhaga—*Opposite parties.*

COMPLAINT No. 14 OF 1962
(arising out of Reference No. 13 of 1962)

Shri Tusli, Loco Driver, Digwadih Jorapokhar Seam,
Jamadoba Colliery, P.O. Jealgora,
District Dhanbad—*Complainant.*

Vs.

Management of Jamadoba Colliery,
C/o Messrs. Tata Iron and Steel Co. Ltd.,
P.O. Jealgora—*Opposite parties.*

COMPLAINT No. 38 OF 1962
(arising out of Reference Nos. 45, 56, 65 and 84 of 1961)

Shri Hem Bahadur, Watchman, Digwadih Colliery,
C/o Colliery Mazdoor Sangh, Dhanbad—*Complainant.*

Vs.

M/s. Tata Iron and Steel Co. Ltd., Jamadoba,
P.O. Jealgora, District Dhanbad—*Opposite parties.*

COMPLAINT No. 54 OF 1962
(arising out of Reference No. 13 of 1962)

PARTIES:

Shri Tulsi, Loco Driver, Jamadoba Colliery,
C/o Colliery Mazdoor Sangh, Dhanbad—*Complainant.*

Vs.

Management of Jamadoba Colliery,
M/s. Tata Iron and Steel Co. Ltd.,
Jamadoba, P.O. Jealgora—*Opposite parties.*

PRESENT:

Shri Raj Kishore Prasad, M.A., B.L., Presiding Officer.

APPEARANCES:

For the Complainants: Shri B. N. Sharma, Colliery Mazdoor Sangh.

For the Opposite party: Shri G. Prasad, Chief Personnel Officer.

STATE: Bihar. INDUSTRY: Coal.

Dhanbad, dated the 4th April, 1963

AWARD

These *six* Complaints, made under Section 33A of the Industrial Disputes Act, 1947, by some employees of the management opposite party of Digwadih Colliery, have been taken up together with the consent of the parties as the same question of law arises for decision in each of these cases.

2. Four of these Complaints— Nos. 6, 7 and 9 of 1961 and 38 of 1962—were not fixed for hearing for today, but, at the express desire of Shri B. N. Sharma, who appeared for the Complainants, in each of these six Complaints, with the

consent of Shri G. Prasad, appearing for the management opposite party, they have also been taken up today and heard along with the other two Complaints Nos. 14 and 54 of 1962.

3. Shri G. Prasad made a preliminary objection to the maintainability of these Complaints on the ground that none of these workmen concerned in these complaints was workman concerned in the dispute, within the meaning of Section 33 of the Industrial Disputes Act, 1947, which was pending in the Reference or References in which these Complaints were made.

4. Complaints Nos. 14 and 54 of 1962—were made during the pendency of Reference No. 13 of 1962; Complaints Nos. 6, 7 and 9 of 1961 were made in Reference No. 49 of 1960; and Complaint No. 38 of 1962 was made in References Nos. 45, 56, 65 and 84 of 1961.

5. I will take up Reference No. 13 of 1962, Reference No. 49 of 1960 and Reference Nos. 45, 56, 65 and 84 of 1961, under three different heads, in order to ascertain the nature of the dispute pending in these references.

REFERENCE NO. 13 OF 1962.

6. Complaints Nos. 14 and 54 of 1962 are by the same Complainant, namely, Tulsi, Loco Driver, Jamadoba Colliery of the opposite party and these two complaints were made on two different dates on 9th May 1962 and 18th October 1962 respectively, in Reference No. 13 of 1962.

In *Reference No. 13 of* 1962 the industrial dispute, referred for adjudication to the Tribunal, was whether the dismissal of Sheo Murat Singh, Attendance Clerk, by the management of Jamadoba Colliery was justified, and, if not, to what relief he was entitled.

In Complaint No. 14 the question is whether the suspension of the Complainant, Tulsi, Loco Driver, of the Colliery with effect from the 30th April, 1962 was legal and justified.

In Complaint No. 54 the question is whether the dismissal of the Complainant, Tulsi, Loco Driver, of Jamadoba Colliery, with effect from the 7th August, 1962, was legal and justified.

From the dispute pending in these two Complaints and the nature of the dispute pending in Reference No. 13 of 1962 it is, therefore, clear that this Complainant, Tulsi, was not at all connected with the dispute which was pending in the said reference. In Reference 13 of 1962 it was an individual dispute in respect of dismissal of one individual worker, Sheo Murat Singh, who was an Attendance Clerk in Jamadoba Colliery, whereas, in the present cases, the Complainant is a Loco Driver in the said Colliery. The mere fact that Tulsi and Sheo Murat Singh, the concerned workman, are both employees of the same Colliery is no ground for holding that Tulsi, the Complainant, was concerned in any way with the dispute regarding dismissal of Sheo Murat Singh in Reference No. 13 of 1962. For these reasons, in view of the decision of the Supreme Court in *Upper Ganges Valley Electricity Supply Company Limited, Moradabad, Vs. (G. S.) Srivastava,* 1963 I. L.L.J. 237, it must be held that the dispute pending in Reference No. 13 of 1962 was an individual dispute in respect of the employee of a different category and class, and, therefore, the present Comobjection, therefore, is upheld and on this ground alone the Complaints Nos. 14 his complaints were not maintainable, because in such a case it cannot be said that there has been a contravention of Section 33 of the Act. The preliminary objection, therefore, is upheld and on this ground alone the Complaints Nos. 14 and 54 of 1962 are dismissed as not maintainable.

REFERENCE NO. 49 OF 1960

7. Complaint No. 6 of 1961 was made on 1st August 1961 by four workers, namely, Sarvashree Musaheb Ram, Line Mistry; Mundrika Ram, Shale Picker; Ram Lal, Watchman; and Khelawan, Ahir, Miner, who were all employees of Digwadih Colliery, complaining against their suspension for more than 10 days.

8. Complaint No. 7 of 1961 was made on 5th August 1961 by three workers, namely, Sarvashree Musaheb Ram Line Mistry; Khelawan Ahir, Miner; and Mundrika Ram, Shale Picker, who were employees of the Digwadih Colliery, complaining against their dismissal by the management from its service.

9. In Complaints Nos. 6 and 7 of 1961, therefore, three of the Complainants, Musaheb Ram, Khelawan Ahir and Mundrika Ram are common, and the difference between the two Complaints is that in Complaint No. 6 they complain against their suspension while in Complaint No. 7 they complain against their dismissal.

10. Complaint No. 9 of 1961 was made on 25th August 1961 by Jharl Puri, Surface Trolleyman of 6 and 7 Pits Colliery, complaining against his dismissal by the management.

11. All the aforesaid three Complaints—Nos. 6, 7 and 9 of 1961 were made during the pendancy of Reference No. 49 of 1960.

12. Reference No. 49 of 1960 was made on 23-11-1960, by which the following industrial dispute was referred to this Tribunal for adjudication:

> "Whether the management of Jamadoba 6 and 7 Pits Jamadoba, Digwadih, Sijua and Malkera Coal Mines had prescribed any incremental scale of wages for the machine drivers prior to coming into operation of the Award of the All India Industrial Tribunal (Colliery Disputes) in May, 1956. If so, whether the management is justified in not paying increments to these machine drivers after coming into operation of the said Award?
>
> If not, to what relief are these machine drivers entitled?".

From the above, it is manifest that in Reference No. 49 of 1960 the question under adjudication was regarding incremental scale of wages for the machine drivers having been prescribed by the management of Jamadoba 6 and 7 Pits, Jamadoba, Digwadih, and two other Collieries mentioned above prior to the award mentioned therein.

13. From the nature of dispute pending in Reference No. 49 of 1960 and the nature of dispute pending in these three complaints—Nos. 6, 7 and 9 of 1961, it is clear enough that as none of these complainants were machine drivers, they could not be said to be connected or concerned with the dispute which was pending in Reference No. 49 of 1960, simply because these complainants were also employees in the Digwadih Colliery, or, 6 and 7 Pits Colliery, where the machine drivers concerned in Reference No. 49 of 1960 were also working.

For these reasons, I hold that these complainants in Complaints Nos. 6, 7 and 9 of 1961 were not workmen concerned in the dispute pending in Reference No. 49 of 1960, and, therefore, they had no right to make the complaints under Section 33A of the Act, in that, there had been no contravention of Section 33 of the Act, and, accordingly, on this preliminary ground alone, these complaints must be, and, are hereby dismissed as not maintainable.

REFERENCE NOS. 45, 56, 65 AND 84 OF 1961:

14. Complaint No. 38 of 1962 was made on 29th September 1962 by Hem Bahadur, Watchman, Digwadih Colliery, against the management complaining against its action in dismissing the worker from the management's service. This complaint arose, as mentioned in the complaint itself, out of References Nos. 45, 56, 65 and 84 of 1961. Let us, therefore, ascertain the nature of the dispute pending in these references.

15. In Reference No. 45 of 1961 the question for adjudication pending before this Tribunal was whether the dismissal of Sri Jagdish Singh, as Underground Munshi, by the management of Digwadih Colliery was justified, and, if not, to what relief he was entitled.

REFERENCE No. 56 OF 1961:

16. In Reference No. 56 of 1961, the dispute which was referred under Section 10(1)(d) of the Act to this Tribunal for adjudication was whether the management of Digwadih Colliery was justified in terminating the services of Jaldhar Singh, Coal Cutter, in the said Colliery. This was also an individual dispute of one worker only. The award in this reference was given by Sri Salim M. Merchant on 3rd August 1962, which was published in the Gazette of India, at page 2614, on 18th August 1962. The said award, I was informed, is pending in appeal before the Supreme Court of India.

REFERENCE No. 65 OF 1961:

17. In Reference No. 65 of 1961, the dispute referred for adjudication was whether the dismissal of Ganesh Mahate by the management of Digwadih Colliery was justified and if not, to what relief he was entitled.

REFERENCE No. 84 OF 1961:

18. Reference No. 84 of 1961 was received by this Tribunal on 29-11-1961, but subsequently it was transferred under the Order of the Ministry to the Patna Tribunal on 8-2-1962. But from the Gazette of India, page 3046, dated 25-11-1961, it appears that it was referred under S.O. 2787 under Section 10(1)(d) of the Act and the industrial dispute which was referred for adjudication was whether the management of Digwadih Colliery was justified in terminating the services of Jahirduddin, and, five other workers of this Colliery. The dispute was an individual dispute of five individual workers only.

19. From the above facts, it will appear that in each of these four references, mentioned above, it was an individual dispute in respect of one employee, except in Reference No. 84 of 1961 in which six employees were concerned, and, therefore, on the principles laid down by the Supreme Court in the case mentioned before, the present complainants could not be said to be concerned with the dispute pending in each of these four references.

20. For these reasons, Complaint No. 38 of 1962 in also not maintainable as the workmen concerned cannot be said to be connected with the dispute pending in any of the four references mentioned above, and, as such, the complainant had no right to make a Complaint under Section 33A of the Act, as there had been no contravention of Section 33 of the Act. This complaint also, is, therefore, dismissed as not maintainable.

21. The net result, therefore, is that all these six complaints—Nos. 6, 7 and 9 of 1961 and 14, 38 and 54 of 1962—are dismissed as not maintainable, because none of the complainants was at all concerned in the dispute pending in any of the aforesaid references, and, therefore, they had no right to make these complaints under Section 33A of the Act.

22. This is my award which I make and submit to the Government of India under Section 15 of the Act.

[No. 2/25/62-LRII.]

Dhanbad,
The 4th April 1963.

(Sd.)RAJ KISHORE PRASAD,
Presiding Officer,
Central Govt. Industrial Tribunal,
Dhanbad.

ORDERS

New Delhi, the 29th May 1963

S.O. 1568.—Whereas, the Central Government is of opinion that an industrial dispute exists or is apprehended between Messrs Mohammad and Sons, Gypsum Contractors to Messrs Associated Cement Companies Limited, Pali-ki-Haveli, Inside Sojati Gate, Jodhpur and their workmen employed in Bhadwasi Gypsum Mines in respect of the matters specified in the Schedule hereto annexed;

And, whereas, the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Delhi, constituted under section 7A of the said Act.

SCHEDULE

Whether the workmen are entitled to any bonus for the periods from the 1st January, 1958 to the 31st March, 1958 and from the 1st April, 1960 to the 31st December, 1960.

[No. 23/17/61-LRII.]

New Delhi, the 31st May 1963

S.O. 1569.—Whereas, the Central Government is of opinion that an industrial dispute exists between the employers inrelation to Messrs R. L. Sharma & Co.,

Calcutta, and their workmen in respect of the matter specified in the Schedule herto annexed;

And, whereas, the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (1) of sub-section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Calcutta, constituted under section 7A of the said Act.

SCHEDULE

"Whether the action of the employers in terminating the services of the persons named in the list appended below was justified? If not, to what relief are the said persons entitled?

List

W. Nos.	Name
1.	Sri Lachman Gholey
3.	Sri Dalsingh Gurung
10.	Sri Umakanta Upadhya
11.	Sri Chyadutt Sarma
12.	Sri Palwan Gholey
13.	Sri Chandra Bahadur Gholey
16.	Sri Dal Bahadur Chhatri
19.	Sri Pryam Bahadur Sarma
23.	Sri Parsa Bahadur Sonahar
24.	Sri Chandra Bahadur Sarkhi
25.	Sri Padam Bahadur Sonahar
26.	Sri Bhakta Bahadur Chetri
27.	Sri Santa Bahadur Chetri
30.	Sri Balkrishna Sharma
31.	Sri Jagat Bahadur Sarkhi
32.	Sri Chandra Bahadur Sarkhi
34.	Sri Lachman Sonahar.

[No. 28(25)/63-LRIV.]

P. R. NAYAR, Under Secy.

New Delhi, the 31st May 1963

S.O. 1570.—In exercise of the powers conferred by sub-sections (1) and (2) of section 7 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby constitutes a Labour Court with headquarters at Calcutta for the adjudication of industrial disputes relating to any matter specified in the Second Schedule to the said Act and for performing such other functions as may be assigned to it under the said Act, and appoints Shri H. R. Deb as the Presiding Officer of that Court.

[No. F. 1/10/63/LRI/I.]

S.O. 1571.—In exercise of the powers conferred by sub-sections (1) and (2) of section 7 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby constitutes a Labour Court with headquarters at Bhubaneswar for the adjudication of industrial disputes relating to any matter specified in the Second Schedule to the said Act and for performing such other functions as may be assigned to it under the said Act, and appoints Shri I. C. Misra as the Presiding Officer of that Court.

[No. F. 1/10/63/LRI/II.]

S.O. 1572.—In exercise of the powers conferred by sub-sections (1) and (2) of section 7 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby constitutes a Labour Court with headquarters at Gauhati for the adjudication of industrial disputes relating to any matter specified in the Second Schedule to the said Act and for performing such other functions as may be assigned to it under the said Act, and appoints Shri B. C. Dutta as the Presiding Officer of that Court.

[No. F. 1/10/63/LRI/III.]

G. JAGANNATHAN, Under Secy.

MINISTRY OF FOOD & AGRICULTURE

(Deptt. of Agriculture) (I.C.A.R.)

New Delhi, the 24th May 1963

S.O. 1573.—In exercise of the powers conferred by section 15 of the Indian Cotton Cess Act, 1923 (14 of 1923), the Central Government hereby makes the following rules, namely :—

1. **Short title and application.**—(1) These Rules may be called the Indian Central Cotton Committee (Temporary Service) Rules, 1963.

(2) Subject to the provisions of sub-rule (3), these rules shall apply to all persons who hold a post under the Committee.

(3) Nothing in these rules shall apply to :—

(a) servants of the Central or any State Government or any other Organisation employed under the Committee on foreign service conditions;

(b) servants of the Committee engaged on contract;

(c) servants of the Committee not in whole time employment;

(d) servants of the Committee paid out of contingencies;

(e) persons employed in extra-temporary establishments, or in work-charged establishments; and

(f) such other categories of employees as may be specified by the Central Government by a special or general order.

2. **Definitions.**—In these rules, unless in context otherwise requires :—

(a) "Committee" means the Indian Central Cotton Committee established under the Indian Cotton Cess Act, 1923 (14 of 1923).

(b) "Committee's Service" means temporary service at the Secretariat of the Committee, the Technological Laboratory or in schemes directly under the administrative control of the Committee.

(c) "quasi permanent service" means temporary service commencing from the date on which a declaration issued under rule 3 takes effect and consisting of periods of duty and leave (other than extra-ordinary leave) after that date.

(d) "specified post" means the particular post or the particular grade of posts in respect of which a servant of the Committee is declared to be quasi-permanent under rule 3.

(e) "temporary service" means officiating and substantive service in a temporary post and officiating service in a permanent post under the Committee.

3. **Quasi-permanent service.**—A servant of the Committee shall be deemed to be in quasi-permanent Service;

(i) if he has been in continuous service of the Committee for more than three years; and

(ii) if the appointing authority, being satisfied as to his suitability in respect of age, qualifications, work and character for employment in a quasi-permanent capacity, has issued a declaration to that effect, in accordance with such instructions as the C ntral Government or the Committee may issue from time to time.

4. **Particulars of declaration.**—(1) A declaration issued under rule 3 shall specify the particular post or the particular grade of posts in respect of which it is issued, and the date from which it takes effect.

(2) Where recruitment to a specified post is required to be made with the prior approval of the Central Government, no such declaration shall be issued except after consultation with that Government.

5. **Procedure for termination of service.**—(1) The service of a temporary servant of the Committee who is not in quasi-permanent service shall be liable to termination at any time by notice in writing given either by the servant of the Committee to the appointing authority or by the appointing authority to the servant of the Committee.

(2) The period of such notice shall be one month, unless otherwise agreed to by the Committee and by the servant of the Committee:

Provided that the service of any such servant of the committee may be terminated forthwith by payment to him of a sum equivalent to the amount of his pay plus allowances (at the same rates at which he was drawing them immediately before the termination of his service) for the period of the notice or as the case may be for the period by which such notice falls short of one month or any agreed longer period:

P ovided further that the payment of allowances shall be subject to the condition under which such allowances are admissible.

6. **Reopening of cases of termination.**—(1) Where a notice is given by the appointing authority terminating the service of a temporary servant of the Committee or where the service of any such servant is terminated either on the expiry of the period of such notice or forthwith by the payment of pay plus allowances the Committee or any other authority specified in this behalf by the Committee or the Central Government may, of its own motion or otherwise, re-open the case and after calling for the record of the case and after making such inquiry as it deems fit, may—

(a) confirm the action taken by the appointing authority; or

(b) withdraw the notice; or

(c) reinstate such servant in service; or

(d) make such other order in the case as it may consider proper :

Provided that no case shall be re-opened under this sub-rule after the expiry of three months—

(i) in a case where notice is given, from the date of notice; and

(ii) in a case where no notice is given, from the date of termination of service.

(2) Where a temporary servant of the Committee is re-instated in service under sub-rule (1) the order of re-instatement shall specify—

(a) the amount or proportion of pay and allowances, if any, to be paid to him for the period of his absence between the date of termination of service and the date of re-instatement, and

(b) whether the said period shall be treated as a period spent on duty for any specified purpose or purposes.

7. **Termination of service of Juasi-permanent servants.**—(1) The service of a servant of the Committee in quasi-permanent service shall be liable to termination;

(i) in the same circumstances and in the same manner as a servant of the Committee in permanent service; or

(ii) when the appointing authority concerned has certified that a reduction has occurred in the number of posts available for the servants of the Committee not in permanent service:

Provided that the service of a servant of the Committee in quasi-permanent service shall not be liable to termination under clause (ii) so long as any post of the same grade and under the same appointing authority as the specified post held by him, continues to be held by a Committee's servant not in permanent or quasi-permanent service:

Provided further that as among servants of the Committee in quasi-permanent service whose specified posts are of the same grade and under the same appointing authority, termination of service consequent on reduction of posts, shall ordinarily take place in order of juniority in the list referred to in sub-rule (2) of rule 8:

Provided further that when the services of a quasi-permanent servant of the Committee are terminated under clause (ii) he shall be given three months' notice and if, in any case, such notice is not given, then with the sanction of the authority competent to terminate the services of such Servant of the Committee, a sum equivalent to his pay *plus* allowances for the period by which the notice actually given to him falls short of three months may be paid to him at the same rates at which he was drawing them immediately before the termination of his services, and if he is entitled to any gratuity, such gratuity shall not be paid for the period in respect of which he receives a sum in lieu of notice.

(2) Nothing in this rule shall affect any special instructions issued by the Committee regarding the manner and the order in which temporary servants of the Committee belonging to any Scheduled Caste (or Scheduled Tribe) may be discharged.

8. **Permanent appoint of Quasi-permanent servants.**—(1) Subject to the provisions of this rule, a servant of the Committee in respect of whom a declaration has been issued under rule 3, shall be eligible for a permanent appointment on the occurrence of a vacancy in the specified posts which may be reserved for being filled from amongst persons in quasi-permanent service, in accordance with such instructions as may be issued by the Central Government or the Committee in this behalf from time to time.

Explanation.—No such declaration shall confer upon any person a right to claim a permanent appointment to any post.

(2) Every appointing authority shall, from time to time after consultation with the appropriate selection sub-Committee, prepare a list, in order of precedence of persons in quasi-permanent service who are eligible for permanent employment. In preparing such a list, the appointing authority shall consider both the seniority and merit of the servants of the Committee concerned. All permanent appointments which are reserved under sub-rule (1) under the control of any such appointing authority shall be made in accordance with such list:

Provided that the Committee may order that permanent appointment to any grade or post may be made purely in order of seniority.

9. A servant of the Committee in quasi-permanent Service and holding a specified post shall, as from the date on which his service is declared to be quasi-permanent, be entitled to the same conditions of service in respect of allowances and disciplinary matters as a servant of the Committee in permanent service holding the specified post.

10. **Termination of Service of servants declared physically unfit.**—Notwithstanding anything contained in rule 5, the services of a temporary Committee servant who is not in quasi-permanent service may be terminated at any time without notice on his being declared physically unfit for continuance in service by an authority who would have been competent to declare him as permanently incapacitated for service had his appointment been permanent.

11. **Payment of gratuity in certain cases.**—A servant of the Committee in quasi-permanent service shall if his service is terminated otherwise than as a deciplinary measure or by resignation, be eligible for :—

(a) a gratuity at the rate of half a month's pay for each completed year of quasi-permanent service, such gratuity being payable on the basis of

the pay admissible to such servant of the Committee in respect of the specified post on the last day of his service, and

(b) any gratuity to which he is entitled in respect of his service before his appointment to quasi-permanent service:

Provided that the gratuity shall not be admissible in cases in which payment of the Committee's contribution to the Indian Central Cotton Committee Provident Fund is admissible under the Committee's rules governing the fund.

12. **Interpretation.**—If any question arises relating to the interpretation of these rules it should be referred to the Central Government whose decision thereon shall be final.

Instructions to regulate the issue of declarations of quasi-permanent eligibility to temporary employees of the Indian Central Cotton Committee under rule 3 *(ii) of the Indian Central Cotton Committee (Temporary Service) Rules* 1963.

1. **Scope of the Instructions.**—These instructions will apply, as provided for in Rule 1(2) of the Rules, to all persons who hold a post under the Indian Central Cotton Committee and who are under the rule making control of the Committee.

2. **Crucial date.**—For purposes of determining eligibility of temporary servants of the Committee in respect of (i) age, and (ii) the condition regarding the three years' continuous service under the Committee, the 1st July of the year in which the declarations are issued shall be the crucial date.

3. **Conditions of eligibility.**—Every temporary servant of the Committee should possess the following qualifications:—

(i) **Age:** The temporary employees should be within the prescribed maximum age limit for the post in which he is proposed to be made quasi-parmanent or 28 or 31 in the case of Schedule Caste candidates, whichever is higher—on the first July of the year in which the declaration is issued. For purposes of calculating this limit of age, he will be allowed to deduct from his actual age the length of his continuous service as defined in rule 2(e) of the Indian Central Cotton Committee (Temporary Service) Rules, 1963:

Provided that in cases where the maximum age for appointment to any post or plass posts has been specifically relaxed by the committee, the maximum so relaxed would be applicable in respect of that post or class of posts notwithstanding the maximum prescribed in these instructions.

(ii) **Educational qualifications.**—The temporary employee should possess the minimum educational qualifications prescribed for the post or service concerned.

(iii) **Length of service.**—The servant of the Committee should have on the crucial date rendered service for more than three years.

NOTE: (1) The term 'service' includes periods of duty and periods of leave including extraordinary leave.

(2) Broken periods of service will not count for purposes of this instruction unless the breaks are condoned specifically by the Committee or the Government of India as the case may be, and the service is thus rendered continuous. In such cases, however, an initial period of service equivalent in length to the period or periods of actual breaks will not be counted as service for purposes of this instruction.

(iv) **Suitability.**—The candidate should be able to satisfy the appointing authority concerned.

(a) that he is physically fit;

(b) that he has willingness and capacity to devote himself to the duties of his post and perform them efficiently, and

(c) that his character and antecedents are such as to render him suitable for quasi-permanent employment under the Indian Central Cotton Committee.

Provided, however, the Committee may, with the approval of the Central Government, in cases in which the Committee is not competent to make the appointment, by special order, exempt any specified case from the operation of these conditions.

4. As soon after 1st July as possible every year the Appointing Authority should review the cases of all temporary employees of the Indian Central Cotton Committee who satisfy the conditions prescribed above with a view to determine their eligibility for the issue of certificates of quasi-permanency. Before reviewing such cases the following steps should be taken:—

(i) register of eligible candidates should be prepared showing accurately and in sufficient detail the age, qualifications, etc. of the candidates concerned. This Register should be put to the Appointing Authority for consideration at the time of the annual review.

(ii) The confidential records of the candidates should be properly maintained and put up for consideration by the Appointing Authority. If, in any specific case the record is incomplete steps should be taken to complete it before the annual review.

(iii) The character and antecedents of the employees should be duly verified by a reference to the Police Authorities concerned before their cases are considered for issue of quasi-permanent certificates. If, in any case the character and antecedents have not been properly verified action should be taken to complete the verification before the annual review. No quasi-permanent certificate should be issued in respect of any employee regarding whom the Appointing Authority is not fully satisfied that his antecedents are such as to deserve this status. Cases of doubt should be referred to the Committee or Central Government, as the case may be, for decision.

(iv) The appointing Authority should satisfy himself that the candidates have been medically examined and found fit for quasi-permanent service in the Indian Central Cotton Committee. If, in any case, the candidates have not been medically examined steps should be taken to get them medically examined before issue of quasi-permanent certificates.

Such of those eligible candidates who satisfy the conditions prescribed in all respect may be recommended by the Appointing Authority for the issue of declarations. In cases of eligible candidates, where he does not consider the issue of declarations justified the reasons for his recommendations should be recorded.

5. For purposes of issue of declarations all existing temporary servants of the Indian Central Cotton Committee who come under the scope of the Indian Central Cotton Committee (Temporary Service) Rules, will be broadly classified as under:

(a) Those holding Class I and II posts, recruitment to which is made by, or with the concurrence of the Central Government;

(b) Those holding Class II and III posts not included in (a) above; and

(c) Those holding Class IV posts.

6. Quasi-permanent declarations will be issued by the Appointing Authorities in accordance with the rules and instructions in force from time to time. Such issue of declarations should have the prior concurrence of the Central Government in cases falling under clause (a) of Instruction 5 and of the Controlling Authorities as shown in the Annexure, in other cases.

7. Declarations of quasi-permanent appointments will be issued in the same form *mutatis-mutandis* as is prescribed by the Government of India for this purpose.

GENERAL

8. The first selection for the issue of declarations of quasi-permanency with effect from 1st July, 1963 be held immediately and completed as soon as possible.

9. Subsequent selections for the issue of declarations will be annual and held every year in July.

10. Every temporary employee should be considered for the grant of certificate on three successive occasions, provided he continues to be eligible and if he fails to secure a certificate on all three occasions, he shall render himself ineligible for further consideration.

11. For purposes of computing three years' continuous service, the portion rendered in a higher grade can be considered to have been rendered in a lower grade. (Illustration: An employee who has rendered 3 years' continuous service of which a part is in the lower grade and a part in the higher grade, should be considered for the grant of a certificate in the lower grade. He will become eligible for consideration for the grant of certificate in the higher grade *only* if and when he completes three years' service in the higher grade).

12. Any person is eligible for the grant of certificate *only* in respect of the particular post or particular grade in which he has actually served. (Illustration: A person who has been recruited to and has put in 3 years' continuous service in any grade is not, if he is not considered suitable for the issue of a certificate in that grade, eligible for the issue of a certificate in the lower grade).

13. (a) Quasi-permanent certificates issued to 'non-gazetted' servants should be embodied in their service Books. In the case of 'Gazetted' employees a copy of the certificate should be forwarded to the Establishment Section of the Committee for incorporation in the Record of Services of the officer concerned.

(b) The 'non-Gazetted' employees to whom quasi-permanent certificates have been issued should be shown as a separate category under each grade in drawing monthly pay-bills.

ANNEXURE

Sl. No.	Category of post	Authority empowered to issue Quasi-permanent Declarations	Controlling Authorities whose concurrence is required prior to the issue of Quasi-permanent Declarations
1.	Posts the maximum pay of which exceeds Rs. 600.	Secretary, Indian Central Cotton Committee.	Secretary/Special Secretary/ Addl. Secretary to the Government of India.
2.	Posts the maximum of which does not exceed Rs. 600.	Secretary, Indian Central Cotton Committee.	Vice-President of the Indian Central Cotton Committee.

NOTE.—Unless there is anything repugnant in the subject or context, these instructions shall be interpreted and applied in the manner *mutatis-mutandis* of the instructions issued under the Central Civil Service (Temporary Service) Rules, 1949.

[No. 10-15/61-Com.II.]

CORRIGENDUM

New Delhi, the 30th May 1963

S.O. 1574.—*For* the words 'I of 1944' occurring in this Ministry's notifications No. 11-2/63-Com.I, dated 9th April, 1963 and Nos. 11-2/63-Com.I(i), 11-2/63-Com.I(ii), 11-2/63-Com.I(iii) and 11-2/63-Com.I(iv), dated the 1st May, 1963 *read* 'X of 1944'.

[No. 11-2/63-Com.I.]

N. K. DUTTA, Under Secy.

MINISTRY OF FINANCE

(Department of Economic Affairs)

New Delhi, the 28th May 1963

S.O. 1575.—In exercise of the powers conferred by sub-section (1) of Section 38A of the Banking Companies Act, 1949 (10 of 1949) the Central Government have appointed, on his return from leave, Shri P. D. Dalal, officiating Official Liquidator, High Court, Bombay, to be the Court Liquidator attached to the said High Court with effect from the 11th May, 1963 until further orders *vice* Shri B. J. Rele.

[No. F.2(5)-BC/63.]

New Delhi, the 1st June 1963

S.O. 1576.—In exercise of the powers conferred by sub-section (7) of section 35 of the State Bank of India Act, 1955 (23 of 1955), the Central Government, in consultation with the Reserve Bank, hereby:—

(a) directs that in its application to the conduct by the State Bank of India of the business acquired by it from the Bank of Aundh under section 35 of the said Act, the said Act shall apply as if for the words "other than companies with limited liability" occurring in sub-clause (d) of clause (i) of section 33 of the said Act, the words "or of joint stock companies with limited liability registered in India or of State Co-operative Banks" had been substituted; and

(b) exempts the State Bank of India for the period from the 1st July, 1963 to the 30th June, 1966, both days inclusive, from the provisions of clauses (a) and (c) of sub-section (1) of section 34 of the said Act in so far as they preclude the State Bank of India from

(i) continuing or realising the advances against the security of immovable property made by the Bank of Aundh and taken over by the State Bank of India under the terms and conditions of acquisition by the State Bank of India of the business of the Bank of Aundh, sanctioned under sub-section (2) of the said section 35 by the Central Government by an order in writing dated the 1st April, 1963; and

(ii) making against the security of immovable property against which the advances referred to above have been made, such further advances as the State Bank of India may consider necessary or expedient for ensuring or facilitating the recovery of the advances made by the Bank of Aundh and realising such further advances.

[No. F. 4(107) 60-SB.]

B. J. HEERJEE, Under Secy.

(Department of Economic Affairs)

New Delhi, the 31st May 1963

S.O. 1577.—In exercise of the powers conferred by sub-section (3) of Section 8 of the Provident Funds Act, 1925 (19 of 1925), the Central Government hereby adds to the Schedule to the said Act, the name of the following public institution, namely:—

"Orissa State Financial Corporation incorporated under the State Financial Corporations Act, 1951 (63 of 1951)".

[No. F. 6(47)-Corp/62.]

S. S. SHARMA, Under Secy.

(Department of Economic Affairs)

New Delhi, the 1st June, 1963

S.O.1578—Statement of the Affairs of the Reserve Bank of India, as on the 24th May, 1963

BANKING DEPARTMENT

LIABILITIES	Rs.	ASSETS	Rs.
Capital paid up	5,00,00,000	Notes	22,45,36,000
		Rupee Coin	2,25,000
Reserve Fund	80,00,00,000	Small Coin	2,63,000
		National Agricultural Credit (Long Term Operations) Fund	
National Agricultural Credit (Long Term Operations) Fund	61,00,00,000	(*a*) Loans and Advances to :—	
		(*i*) State Governments	27,17,01,000
National Agricultural Credit (Stabilisation) Fund	7,00,00,000	(*ii*) State Co-operative Banks	8,91,87,000
		(*iii*) Central Land Mortgage Banks	..
		(*b*) Investment in Central Land Mortgage Bank Debentures	2,84,88,000
Deposits :—			
		National Agricultural Credit (Stabilisation) Fund	
(*a*) Government		Loans and Advances to State Co-operative Banks	..
(*i*) Central Government	57,17,61,000	Bills Purchased and Discounted :—	
(*ii*) State Governments	10,05,56,000	(*a*) Internal	..
		(*b*) External	..
(*b*) Banks		(*c*) Government Treasury Bills	43,91,65,000
		Balances Held Abroad*	9,39,48,000
(*i*) Scheduled Banks	82,59,64,000	Loans and Advances to Governments**	50,69,63,000
(*ii*) State Co-operative Banks	1,87,54,000	Loans and Advances to:—	
(*iii*) Other Banks	6,33,000	(*i*) Scheduled Banks†	8,75,85,000
		(*ii*) State Co-operative Banks‡	111,71,11,000
(*c*) Others	169,45,23,000	(*iii*) Others	3,45,02,000
Bills Payable	29,38,78,000	Investments	256,79,30,000
Other Liabilities	80,42,82,000	Other Assets	37,87,47,000
Rupees	584,03,51,000	Rupees	584,03,51,000

*Includes Cash and Short-term Securities.

**Excluding Loans and Advances from the National Agricultural Credit (Long Term Operations) Fund, but including temporary overdrafts to State Governments.

†Includes Rs. 6,28,00,000 advanced to scheduled banks against usance bills under Section 17(4) (c) of the Reserve Bank of India Act.

‡Excluding Loans and Advances from the National Agricultural Credit (Long Term Operations) Fund and the National Agricultural Credit (Stabilisation) Fund.

Dated the 29th day of May 1963.

An Account pursuant to the Reserve Bank of India Act, 1934, for the week ended the 24th day of May, 1963

ISSUE DEPARTMENT

LIABILITIES	Rs.	Rs.	ASSETS	Rs.	Rs.
Notes held in the Banking Department	22,45,36,000		Gold Coin and Bullion :—		
			(a) Held in India	117,76,10,000	
Notes in circulation	2295,74,82,000		(b) Held outside India	..	
Total Notes issued		2318,20,18,000	Foreign Securities	110,08,43,000	
			TOTAL		227,84,53,000
			Rupee Coin		113,92,13,000
			Government of India Rupee Securities		1976,43,52,000
			Internal Bills of Exchange and other commercial paper		..
TOTAL LIABILITIES		2318,20,18,000	TOTAL ASSETS		2318,20,18,000

Dated the 29th day of May, 1963.

P. C. BHATTACHARYYA,
Governor.

[No. F. 3(2)-BC/63.]

A. BAKSI, Jt. Secy.

(Department of Revenue)

INCOME-TAX ESTABLISHMENTS

New Delhi, the 29th May 1963

S.O. 1579.—In pursuance of clause (b) of sub-rule (ii) of rule 2 of the Appellate Tribunal Rules, 1946, the Central Government has been pleased to appoint the following Income-tax Officers, Class I, as Authorised Representatives, Income-tax Appellate Tribunal, at the places and with effect from the dates mentioned against their names, to appear, plead and act for any Income-tax authority who is a party to any proceedings before the Income-tax Appellate Tribunal.

Sl. No.	Name	Date from which appointed	Place where posted as Authorised Representative.
1	Shri Jaswant Rai, Assistant Director of Inspection (Investigation), New Delhi.	20-5-1963	Delhi.
2	Shri J. P. Malhotra, Income tax Officer, Class I, Delhi.	20-5-1963	Delhi.
3	Shri H. C. Sharma, Income-tax Officer, Class I, West Bengal, Calcutta.	14-5-1963 (A.N.)	Calcutta.

[No. 40.]

S.O. 1580.—Consequent on his posting as Assistant Commissioner of Income-tax, Uttar Pradesh, Bareilly, the powers conferred on Shri S. R. Vaish, by the Ministry of Finance (Department of Revenue) Notification No. 267—Income-tax Establishments, dated the 1st September 1961, are hereby withdrawn with effect from 13th May 1963 (Afternoon).

[No. 41.]

S.O. 1581.—Consequent on his posting as Assistant Commissioner of Income-tax, Madhya Pradesh, Raipur, the powers conferred on Shri A. Y. Mehta, by the Ministry of Finance (Department of Revenue) Notification No. 211—Income-tax Establishments, dated the 9th July 1962, are hereby withdrawn with effect from 13th May 1963 (Afternoon).

[No. 42.]

M. G. THOMAS, Under Secy.

(Department of Expenditure)

ERRATUM

In the notification of the Government of India in the Ministry of Finance (Department of Expenditure) No. S.O. 1286, dated the 30th April, 1963, on page 1449: in line 2 of para 2(i)(b), for the word "term" read "item"."

CENTRAL BOARD OF REVENUE

ESTATE DUTY

New Delhi, the 30th May 1963

S.O. 1582.—In exercise of the powers conferred by the second proviso to sub-section (2) of section 4 of the Estate Duty Act, 1953 (34 of 1953), the Central Board of Revenue hereby makes the following amendment in its notification No. 72/F. No. 21/64/61-ED dated the 23rd December, 1961, namely:—

In the Schedule to the said notification, in column 3 against Serial No. 2, after the words "and Khammameth", the words "of the Andhra Pradesh State and the territory of Yanam in the Union territory of Pondicherry" shall be inserted.

2. This notification shall be deemed to have come into force on the 1st day of April, 1963.

Explanatory Note

(This note is not part of the notification but is intended to be merely clarificatory).

This notification has become necessary in consequence of the extension of the Estate Duty Act to the Union territory of Yanam with effect from the 1st April, 1963.

[No. 7/F. No. 21/63/63-ED.]

S.O. 1583.—In exercise of the powers conferred by the second proviso to sub-section (2) of section 4 of the Estate Duty Act, 1953 (34 of 1953), the Central Board of Revenue hereby makes the following amendment in its notification No. 61/F. No. 21/91/61-ED dated the 11th October, 1961, namely:—

In the said notification, after the words "and Salem", the words "of the Madras State and the territories of Pondicherry and Karikal in the Union territory of Pondicherry" shall be inserted.

2. This notification shall be deemed to have come into force on the 1st day of April, 1963.

Explanatory Note

(This note is not part of the notification, but is intended to be merely clarificatory).

This Notification has become necessary in consequence of the extension of the Estate Duty Act to the union territories of Pondicherry and Karikal with effect from the 1st April, 1963.

[No. 8/F. No. 21/69/63-ED.]

S.O. 1584.—In exercise of the powers conferred by the second proviso to sub-section (2) of section 4 of the Estate Duty Act, 1953 (34 of 1953), the Central Board of Revenue hereby makes the following amendment in its notification No. 15/F. No. 21/38/59-ED dated the 25th May, 1959, namely:—

In the said notification, after the words "and Kutch", the words "of the Gujarat State and the territory of Diu in the Union territory of Goa, Daman and Diu" shall be inserted.

2. This notification shall be deemed to have come into force on the 1st day of April, 1963.

Explanatory Note

(This note is not part of the notification, but is intended to be merely clarificatory).

This notification has become necessary in consequence of the extension of the Estate Duty Act to the union territory of Diu with effect from the 1st April, 1963.

[No. 9/F. No. 21/70/63-ED.]

S.O. 1585.—In exercise of the powers conferred by the second proviso to sub-section (2) of section 4 of the Estate Duty Act, 1953 (34 of 1953), the Central Board of Revenue hereby makes the following amendment in its notification No. 16/F. No. 21/38/59-ED dated the 25th May, 1959, namely:—

In the said notification, after the words "and Panch Mahals", the words "of the Gujarat State, the territory of Daman in the Union territory of Goa, Daman and Diu and the Union territory of Dadra and Nagar Haveli" shall be inserted.

2. This notification shall be deemed to have come into force on the 1st day of April, 1963.

Explanatory Note

(This note is not part of the notification but is intended to be merely clarificatory).

This notification has become necessary in consequence of the extension of the Estate Duty Act to the union territory of Daman and the union territory of Dadra and Nagar Haveli with effect from the 1st April, 1963.

[No. 10/F. No. 21/70/63-ED.]

..... S. R. MEHTA, Secy.

CENTRAL EXCISE COLLECTORATE, ALLAHABAD

CENTRAL EXCISES

Allahabad, the 13th May 1963

S.O. 1586.—In exercise of the powers conferred on me under rule 233 of the C.E. Rules, 1944, I authorise Sub-Inspectors of Central Excise also to exercise powers of the 'Proper Officer' or the 'Range Officer' as the case may be under the rules mentioned in column 1 of the Table below subject to the conditions and limitations, if any, set out in column 2 of the aforesaid Table against these rules:—

TABLE

C.E. Rule No.	Condition and Limitations, if any
32 [NOTE (a)]	..
50	..
52	(i) To exercise powers of assessment and clearance only in respect of those manufactured excisable goods in which there is not more than one classification of goods for tariff purposes and the assessments are not made *ad valorem*.
	(ii) To exercise powers of assessment and clearance from a factory producing only a single excisable article which is charged to duty at specific rate.
158 } 185 }	Only to allow clearances of tobacco from bonded warehouses of class III and IV categories subject to periodical test checks by the Inspectors and the Deputy Superintendents.

[No. 8-C.E./63.]

S. P. KAMPANI, Collector.

OFFICE OF THE COLLECTOR OF CENTRAL EXCISE, PATNA

CUSTOMS

Patna, 5th March 1963

S.O. 1587.—Sri A. R. Shanmugam, Collector of Central Excise & Land Customs, Patna do hereby empower officers of Central Excise mentioned in column 2 of

the table below to exercise powers specified in the Sections of the Customs Act, 1962 mentioned in the corresponding entry in column 1 of the said Table:—

(1)	(2)
Sections 101 and 107	All Officers of Central Excise except clerks and Class IV Officers.
Section 104	All Officers of Central Excise of and above the rank of Inspectors of Central Excise.

[No. 1/Customs/63.]

S.O. 1588.—Sri A. R. Shanmugam, Collector of Central Excise & Land Customs, Patna do hereby assign the powers specified in Sections of the Customs Act, 1962 mentioned in column 1 of the Table below to officers of Central Excise specified in the corresponding entry in column 2 of the said table.

(1)	(2)
Sections 100, 106 and 110	All Officers of Central Excise.
Section 103	All Officers of Central Excise except clerks and Class IV Officers.

[No. 2/Customs/63.]

TRADE NOTICES

Patna, the 20th May, 1963

SUBJECT:—*Tobacco warehouse licenses—dryage register—maintenance of by-instructions—regarding.*

S.O. 1589.—In exercise of the powers conferred upon me under Rules 233 Central Excise Rules, 1944, it is hereby notified for the general guidance and necessary compliance of the warehouse licenses of this Collectorate so that a register in a form appended hereto, is maintained.

The register has been found, on experiments, to be very useful. Both Private and Public Bonded warehouses should maintain registers separately for each warehouse so that the full idea about the trend of dryage may be known at a glance.

Separate sections should be opened in the register for showing storage losses and transit losses. Processing losses need not be shown in this register.

All enteries in each section, of this register shall be serially numbered for each calendar year.

As regards transit losses only those cases will be entered which were covered by bond executed by the licensees.

In this register only those transactions are to be recorded which show any loss even though they may be condoned by the Inspector.

In column 8 of the register entries should be like

(a) Condoned in full by————————

(b) Condoned————————KG and duty demanded on———————— KG by————————.

WAREHOUSE DRYAGE R ISTER

Name & Address of Licensee————L.5 No. Losses in Transit/storage

Sl. No.	Tariff classification and description of tobacco including local name	Sl. No. of entry in WRG 2 (PART I, II or III)	Net weight of goods transported/ stored	Net weight of goods warehoused/cleared	Quantity of loss in transit/ storage
1	2	3	4	5	6

Percentage of Col. 4 to 6	Action taken on loss	Treasury Challan No. and date under which duty deposited if any	Remarks
7	8	9	10

[No. 3-Tob/63.]

Patna, the 21st May 1963

SUBJECT:—*Patent or proprietary Medicines—Maintenance of R.G. I or modified R.G. I—Rule 53 of the Central Excise Rules, 1944.*

S.O. 1590.—In view of the special circumstances of the drugs industry, it has been decided that the manufacturers of patent or proprietary medicine may not make entries in R.G. I or modified R.G. I, for individual items, on such dates when there is no manufacture, no deposit in the store room and no clearance from the factory. Entries should be made only on the days when there is some manufacture, clearance or removal to the store-room.

[No. 26/1-MP/63.]

A. R. SHANMUGAM, Collector.

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